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FEDERAL COMMUNICATIONS COMMISSION REPORTS
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FEDERAL COMMUNICATIONS COMMISSION

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INDEX

	Page
Aircraft Use of Land Mobile Frequencies; docket No. 19545 (F.C.C. 73-819)	505
Antenna Height Restrictions; docket No. 19798 (F.C.C. 73-820)	511
Belo Broadcasting Corp., et al.; dockets Nos. 19744 et al. (F.C.C. 73R-302)	516
Belo Broadcasting Corp., et al.; dockets Nos. 19744 et al. (F.C.C. 73R-309)	520
Bob Jones University, Inc.; files Nos. BR-2377 et al. (F.C.C. 73-741)	522
CATV-Non Network Agreements; docket No. 18179 (F.C.C. 73-890)	526
Channel Seventeen, Inc.; re request for statement concerning future policies as to program-length commercials (F.C.C. 73-874)	529
Communications Satellite Corporation et al.; files Nos. 17-CSS-P-(3)-73 et al. (F.C.C. 73-883)	533
FM Table of Assignments; docket No. 19732 (F.C.C. 73-802)	546
FM Table of Assignments; docket No. 19717 (F.C.C. 73-837)	548
FM Table of Assignments; docket No. 19688 (F.C.C. 73-841)	551
FM Table of Assignments; docket No. 19550 (F.C.C. 73-842)	553
FWS Radio, Inc. et al.; files Nos. 2201-C2-P-69 et al. (F.C.C. 73-876)	558
Heftel Broadcasting-Boston, Inc.; files Nos. BALH-1740 et al. (F.C.C. 73-833)	562
Horne Industries, Inc.; dockets Nos. 18989 et al. (F.C.C. 73D-40)	563
International Record Carriers' Communications; docket No. 19660 (F.C.C. 73-887)	574
KTFI Broadcasters, Inc.; request for issuance of tax certificate (F.C.C. 73-750)	578
Lexington County Broadcasters, Inc., et al.; dockets Nos. 19568 et al. (F.C.C. 73R-307)	581
Midland Television Corp.; re notice of apparent liability for forfeiture (F.C.C. 73-868)	587
Midland Television Corp.; re request for statement concerning future policies as to program-length commercials (F.C.C. 73-869)	591
Mid New York Broadcasting Corp.; re notice of apparent liability for forfeiture (F.C.C. 73-872)	594
Mid New York Broadcasting Corp.; re request for statement concerning future policies as to program-length commercials (F.C.C. 73-873)	597
Monroe County Broadcasting Co., Inc.; docket No. 18676 (F.C.C. 73D-39)	600
Personal Attack Ruling; re complaint by John Cervase against station WNET-TV	613
Prime Time Access Rule; request for waiver by Columbia Broadcasting System, Inc. (F.C.C. 73-888)	615
Prime Time Access Rule; request for waiver by NBC and CBS in connection with certain sports events (F.C.C. 73-889)	617
Southern Broadcasting Co. et al.; dockets Nos. 18906 et al. (F.C.C. 73R-306)	620
Turner Broadcasting of North Carolina; re notice of apparent liability for forfeiture (F.C.C. 73-866)	622
Turner Broadcasting of North Carolina; re request for statement concerning future policies as to program length commercials (F.C.C. 73-867)	626
Twin County Trans-Video, Inc.; files Nos. CPCAR-423 et al. (F.C.C. 73-760)	629
United Television Co. of New Hampshire; re notice of apparent liability for forfeiture (F.C.C. 73-864)	632
United Television Co. of New Hampshire; re request for statement concerning future policies as to program-length commercials (F.C.C. 73-865)	636
WXON-TV, Inc.; re notice of apparent liability for forfeiture (F.C.C. 73-870)	639
WXON-TV, Inc.; re request for statement concerning future policies as to program-length commercials (F.C.C. 73-871)	642

F.C.C. 73-819

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 89, 91, AND 93 OF THE COMMISSION'S RULES CONCERNING USE OF LAND MOBILE FREQUENCIES ABOARD AIRCRAFT.	Docket No. 19545

REPORT AND ORDER

(Adopted August 2, 1973; Released August 8, 1973)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT.

1. On July 12, 1972, the Commission adopted a Notice of Proposed Rule Making (35 FCC 2d 797) in the above entitled proceeding to amend its rules to limit the licensing and operation of communication facilities on board aircraft in the land mobile radio services. Comments in response to the Notice were received from the parties listed in Appendix A and have been carefully considered.

2. The basic purpose of this proceeding is to restrict the potential for interference to land-base operations primarily from operation on land mobile frequencies aboard high-flying aircraft, particularly on aircraft operated by scheduled passenger airlines. Aircraft communications for airline radio operations are regularly authorized in Aviation Radio Services under Part 87 of the Commission's Rules. However, a few airlines have obtained additional authorizations in the Business Radio Service to transmit convenience-type messages from planes related to passenger activities. Favorable passenger response to this special service has apparently increased airline interest in expansion of operations of this nature. The Commission has found, however, that the transmission range and effect of radio operation on board planes at the heights and distances involved in passenger airline flights greatly increase the potential for widespread interference to regular land-based operations. The rule change would restrict these radio communications to provide protection from such interference to licensees operating within the normal framework and regulatory plan for land mobile systems.

3. There was no disagreement in the comments with respect to necessity for this rule to restrict airline radio operations on land mobile frequencies. Two parties, Continental Airlines, Inc. and Aeronautical Radio, Inc. (ARINC) asked that deletion of these operations not be put into effect until there were alternative frequencies for the airlines to use for passenger messages. Continental argues that it has been using the frequency 461.25 MHz in the Business Radio Service for air-to-ground radio traffic on behalf of passengers to coordinate cabin service activities, to arrange reservations and connecting flights,

104-008—73——1

for medical advisory consultations, and to obtain interpreter services. It contends that these operations should be permitted to continue "on the basis of procedures established over a twelve (12) year period of operation, until such time as new allocations of the radio spectrum are provided for air/ground Business Radio purposes." More specifically, ARINC, which provides enroute radiocommunications for airlines related to the safety of aircraft, states that it believes the solution to meeting the requirement for passenger communications lies in the allocation of spectrum exclusively for "cabin requirements" from the band 806–960 MHz.

4. As indicated in our Notice, the Commission realizes that an accommodation for aircraft passenger service communications may be justifiable in a different structure where inherent interference problems are not involved. For example, ARINC's recommendation for accommodating this service on frequencies in the 806–947 MHz region will be given further consideration in our proceeding in Docket 18262. At this time, however, we find that, consistent with the purposes of this proceeding, the paramount public interest requirement is for deletion of this type of aircraft operation on the existing land mobile frequencies. Accordingly, our proposal to preclude operations of this nature in land mobile services is being adopted. With respect to presently authorized operations in these services, we believe that it would be reasonable to require the licensees to amortize their equipment investment within the current license terms. Consequently, these airline operations will be permitted to continue only for the duration of present license terms. At the same time, as we have noted, the Commission will look for reasonable alternatives for permitting this type of operation and we welcome suggestions in this regard.

5. A different category of aircraft operation also under consideration in our Notice involves the low-flying, short-range helicopters and fixed-wing planes that are extensively used in a variety of applications. Examples include such diverse functions as water-scanning by fisheries that have become dependent upon "spotting" capability of aircraft, pipe-line surveillance in the petroleum and natural gas industries, "flying-ambulances" for hospitals, and numerous local government activities. Generally, these aircraft fly at low altitudes from a few hundred to a few thousand feet, as opposed to passenger airline planes which regularly operate above 20,000 feet. The potential for extended-range interference from operations on board such aircraft, therefore, is much reduced. Further, the comments have indicated that in many situations such aircraft are an integral part of land based operations and in others practical communications alternatives are not readily available. For these reasons, the following rule specifically providing for regular licensing of these aircraft in land mobile services was proposed for inclusion in Parts 89, 91 and 93:

> **Radio facilities authorized under this part may not be operated on board aircraft in flight except where the aircraft is an integral part of an operation in which land vehicles are primarily involved and where there is a requirement for direct communications between the aircraft and the land vehicles.**

6. The comments generally supported the proposed rule change. There was some concern, however, that the specific rule is too limited in restricting communications to air-to-ground, and only when directed

to land vehicles. These parties ask that the rule provide also for authorization of land mobile systems which incorporate air-to-air, air-to-base, or air-to-ship transmissions as an integral, or even sole, radio communication requirement.

7. It is not inconsistent with the underlying intent of our proposal that these aircraft radio operations, in addition to air-to-mobile operations, be included as permissible communications. At the same time, however, there must be practical limitations. Our analysis of the communication requirements for aircraft operating as part of land mobile radio systems shows that most aircraft can achieve a reasonable transmission range with a transmitter output power of 10 watts, below a one-mile ceilng.* Accordingly, we are incorporating these power and ceiling limitations as basic standards and will authorize exceptions only upon a showing of unusual operational requirements, and only where the potential for interference is not thereby increased. Even within these standards, however, in a given geographical area or for a particular utilization, some aircraft operations may manifest an unacceptable potential for interference. The reasonable solution appears to be case-by-case analysis of each proposed land mobile service aircraft operation, and attachment of conditions to licenses which will afford requisite protection to regular land-based operations. Conditions to be applied might include further restriction on transmitter power and ceilings for operations, a limitation on the geographic area which may be served, or other appropriate restriction. One general condition that will apply to all aircraft licensing of this nature is that the operations must be on a non-interference basis to regular land mobile systems.

8. Within this framework, the Commission is adopting rule changes for the land mobile services for regular authorization of aircraft operations. The specific proposed rule is being modified to expand the allowable points of communication, to provide power limits and flying ceilings for radio transmissions, and to reflect the conditional nature of these aircraft operations.

9. In the Notice in this rule making matter, the Commission determined that pending its resolution of the issues in this proceeding, no action would be taken on new applications for licensing aircraft radio operations in land-mobile services. A number of these applications have been received, and they will be expeditiously handled in accordance with the rule changes being adopted herein. There are also a number of present authorizations for land mobile operations which include operations on board low-flying aircraft. Few of these operations conform to the standards being adopted, particularly with respect to authorized transmitter power. For the reasons already discussed, we find that these operations should not be permitted on an indefinite basis. Accordingly, we will permit only one renewal of current licenses for aircraft operations which do not meet the new standards. A longer period for temporary continued operation of these aircraft stations has

*Ceiling in this instance being altitude above the earth's service. Based upon line-of-sight propagation, the radio horizon from the aircraft approximates 100 miles. The limitation of ten watts transmitter output power at the frequencies involved, taking into account other system parameters, should normally provide adequate communications between the aircraft and associated base and mobile stations on the surface at distances up to 60 miles.

been afforded than for the high-flying airline radio operations in consideration of lesser interference potential of the latter transmissions.

10. Pursuant to the foregoing, the Commission determines that the public interest, convenience, and necessity will be served by amendment of its rules, essentially as proposed, to restrict licensing of aircraft operations in the land-mobile radio services.

11. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, IT IS ORDERED, That effective September 14, 1973, Parts 89, 91, and 93 of the Commission's Rules ARE AMENDED as shown in the attached Appendix B. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX A

The following parties submitted timely comments and/or reply comments in response to the Notice of Proposed Rule Making in Docket 19545:

Aeronautical Radio, Inc.
Aerospace and Flight Test Radio Coordinating Council
Air Logistics, Inc.
Air Marine, Inc.
Alert Identification Directive Service, Inc.
American Petroleum Institute
Arizona Department of Public Safety
Associated Public-Safety Communications Officers, Inc.
Boise Cascade Corporation
California State Communications Division
Continental Airlines
Forest Industries Telecommunications
General Electric Company
International Association of Fire Chiefs
International Municipal Signal Association
State of Iowa
Louisiana Menhaden Fisheries et al
Louisiana Wild Life and Fisheries Commission
Moyer Aero-Spray
National Association of Business and Educational Radio, Inc.
National Association of Manufacturers
Offshore Raydist, Inc.
Offshore Navigation, Inc.
Simpson Timber Company
Special Industrial Radio Service Association, Inc.
Teledyne Hastings-Raydist
Vir James Consulting Radio Engineers

APPENDIX B

I. Part 89 of the Commission's Rules is amended by adding new rule Section 89 to read as follows:

§ 89.156 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile stations first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

(1) Operations are limited to aircraft that are regularly flown at altitudes below one-mile above the earth's surface;

(2) Transmitters are to operate with an output power not to exceed ten watts;

(3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;

(4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one mile above the earth's surface;

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one mile above the earth's surface.

II. Part 91 of the Commission's Rules is amended by adding new rule Section 91.162 to read as follows:

§ 91.162 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile stations first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

(1) Operations are limited to aircraft that are regularly flown at altitudes below one mile above the earth's surface;

(2) Transmitters are to operate with an output power not to exceed ten watts;

(3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;

(4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not be thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one-mile above the earth's surface.

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one-mile above the earth's surface.

III. Part 93 of the Commission's Rules is amended by adding new rule Section 93.164 to read as follows:

§ 93.164 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile stations first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

(1) Operations are limited to aircraft that are regularly flown at altitudes below one mile above the earth's surface;

(2) Transmitters are to operate with an output power not to exceed ten watts;

(3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;

(4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one mile above the earth's surface;

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one mile above the earth's surface.

F.C.C. 73-820

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF § 95.37(c) CONCERNING THE ANTENNA HEIGHT RESTRICTIONS ON CLASS C OR D STATIONS IN THE CITIZENS RADIO SERVICE.	Docket No. 19798 RM-800, 953, 1688, 1714, 2126, 2147

NOTICE OF PROPOSED RULEMAKING

(Adopted August 2, 1973; Released August 8, 1973)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT.

1. The Commission has under consideration the petitions for rule making in the above-entitled matter which have been submitted by the Five County C. B. Club, Inc. (RM-800), the late George Nims Raybin (RM-953), the Electronic Industries Association (RM-1688), Alert (RM-1714), the Illinois State Citizens Band Radio Association, Inc., (RM-2126), and the United States Citizens Radio Council (RM-2147). All of the foregoing petitions request amendment of § 95.37 to increase the permissible height for Class D station antennas.

2. RM-800 requests that antennas be allowed to be 20 feet above any natural formation, tree, or man-made structure within a specified distance from the antenna structure. RM-953 requests that § 95.37(c) (1) and (2) be amended by changing "20" to "25". RM-1688 requests essentially two changes to allow antennas to be 60 feet high, (1) if they are not within one mile from airport or, (2) if they are shielded by a structure located within 500 yards of the antenna structure. RM-1714 proposes a limitation of 200 feet except within a specified slope pattern. RM-2126 proposes to allow antennas to be as high as 100 feet and would establish a slope pattern. RM-2147 requests a maximum height of 80 feet except within a specified slope pattern.

3. The Commission is in agreement with the basic thrust of these petitions for rule making. The present Class D antenna rules, see § 95.37(c), have resulted in some inequities and as pointed out in RM-2147 in some cases is discriminatory to Citizens licensees as opposed to other land mobile radio operators. However, any change the Commission makes in the rules affecting antenna height limitations must meet at least the following criteria. First, it must be capable of uniform application without the necessity for Commission consideration on an individual application basis of the facts in a particular case. The large volume of Citizens radio applications received each month precludes any rule which would require such an individual determination. Second, the uniform application of the rule must result in no situation where the antenna might be considered to be a potential hazard to air navigation under Federal Aviation Administration (FAA) regulations. Third, the rule must be written in a manner so

as to be easily understood and applied to particular situations by licensees.

4. None of the suggested rules contained in the foregoing petitions comply with all of these criteria. RM–800, 953, 1688, and 1714 all fail to comply with the FAA regulations. RM–2126 and 2147 would require the Commission to make a determination on certain applications that no antenna hazard exists. Accordingly, the Commission is unable to find that any of the proposed rule amendments contained in the aforementioned petitions present a viable alternative to our present Class D antenna rules.

5. Moreover, putting aside the FAA standards and the need for individual examination by the Commission of proposed antenna construction, the Commission is somewhat concerned that any rule based on a slope pattern, as many of the six petitions are, will prove difficult for licensees to understand and apply properly. Slope patterns, it should be emphasized, are not measured from ground level but from the established elevation (mean sea level) of the airport. While other radio services, with the exception of the Amateur Radio Service, use slope patterns, licensees in those services have trained manufacturers representations available for consultation and assistance. Citizens Radio Service licensees for the most part do not have that type of assistance available to them.

6. Nevertheless, the Commission proposes to amend § 95.37(c) to provide some relaxation of the antenna height limitations. Currently, a Class C or D station antenna must comply with at least one of the limitations contained in subparagraphs 1 through 4 of that section. The Commission proposes to amend § 95.37(c) to allow a Class D or Class C antenna and its supporting structure to be as high as 60 feet, in many cases, if it is more than 6,000 feet from an airport. For antenna structures located within 20,000 feet of an airport we are proposing a slope pattern but with an explanatory note. This note sets forth the procedure a licensee must use in order to determine the maximum permitted antenna height when his antenna structure is located within the slope pattern. It is important to emphasize that our proposed rule still will present some difficulties in application. A licensee who wants to erect an antenna higher than 20 feet within 20,000 feet of an airport will be required to determine his antenna site's height above sea level and also the airport's established elevation (height above mean sea level). Under our proposed rule he may then erect an antenna to the limit of the slope pattern from the level of the airport but not more than 60 feet above the ground level. A practical example of this requirement is that if the nearest airport is 40 feet above sea level, the antenna site is 50 feet above sea level and 4,000 feet from the airport, then the antenna may only be 30 feet above ground level not 40 feet as might otherwise be supposed. Another example of this is if the nearest airport is 50 feet above sea level, the antenna site is 40 feet above sea level and 4,000 feet from the airport, then the antenna may be 50 feet above ground level. The practical effect on the proposed rule is that an applicant must draw an imaginary horizontal line from the level of the airport to this antenna site. From that imaginary line, he may erect an antenna of one foot in height for every 100 feet in horizontal distance from the

nearest point of the runway but not more than 60 feet above ground level. See figures 1 and 2 of Appendix B.

7. The primary purpose of permitting such an increase in height is to enable licensees to erect antennas above nearby obstacles which may absorb radiated energy and thus decrease ability to communicate. The Commission believes that the 60 foot maximum proposal of this Notice represents a reasonable antenna height which will accomplish this purpose. Moreover, this increase in permissible height may tend to decrease television interference problems since it will allow increased height differential between Class D antennas and television antennas.

8. These proposed amendments will provide in substantial degree the relief request in these six petitions while still meeting the criteria set forth in paragraph 3 of this Notice. The text of the proposed amendment is set forth in the attached Appendix. We invite, however, suggestions and comments from informed persons on how we might be able to simplify these proposed rules and whether increased antenna heights will cause undue interference.

9. The proposed greater antenna heights will, however, result in a general escalation in transmission distances. When high gain directional antennas, e.g., Yagis and cubical quads, are employed, the increase in propagated signal strength by sky wave transmission may be sufficient to encourage illegal long distance skip communications. Accordingly, we are inviting specific comments on whether we should ban the use of high gain directional antennas in the Class D service after January 1, 1976, while permitting Omni-directional antennas with a maximum gain of 3 dB.

10. Authority for this action is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

11. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before October 15, 1973, and reply comments on or before October 26, 1973. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

12. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLENS, *Acting Secretary.*

APPENDIX A

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 95.37 is amended to read as follows:

Section 95.37 *Limitations on antenna structures.*

* * * * * * *

(c) A Class C or Class D station operated at a fixed location shall employ a transmitting antenna which complies with at least one of the following:

Note.—A manmade structure is any construction other than a tower, mast, or pole.

1. The antenna and its supporting structure does not exceed 20 feet in height above ground level; or

2. The antenna and its supporting structure does not exceed by more than 20 feet the height of any natural formation, tree or man-made structure on which it is mounted; or

3. The antenna is mounted on the transmitting antenna structure of another authorized radio station and does not exceed the height of the antenna supporting structure of the other station; or

4. The antenna is mounted on and does not exceed the height of the antenna structure otherwise used solely for receiving purposes, which structure itself complies with subparagraph (1), (2), or (5) of this paragraph.

5. The highest point of the antenna or its supporting structure does not exceed 60 feet above ground level and the highest point also does not exceed one foot in height above the established airport elevation for each 100 feet of horizontal distance from the nearest point of an airport runway.

DETERMINING MAXIMUM ANTENNA HEIGHT FOR CLASS C/D CITIZENS RADIO SERVICE STATIONS

Under Subparagraph 5

The highest point, for an antenna installation used in a station licensed in the Class C and Class D categories of the Citizens Radio Service, is 60 feet above ground level, *except* where the installation would penetrate an imaginary sloping line extending outward from an airport runway. In such areas, antenna installations could pose hazards to operating aircraft. Only those installations which would exceed one foot above the nearest runway for every 100 feet from the runway would be limited to less than 60 feet in height. Because the antenna site ground level may be at a different elevation than the runway, both points must be referenced to a common line, in this case mean sea level, in order to determine the maximum allowable antenna height above ground level. Prior to erecting an antenna structure, the following procedure must be followed to determine the maximum allowable antenna height above ground level (MAAHAGL).

Step 1. The use of a suitable topographic map(s) is necessary. From the map(s), determine the elevation above mean sea level (AMSL) of the antenna site.

Elevation of antenna site=---------- feet AMSL.

Step 2. Contact the operator of the airport having the runway nearest to the antenna site, and determine the elevation AMSL of the point on the runway nearest to the antenna site.

Elevation of nearest airport runway=---------- feet AMSL.

Step 3. From the map(s), determine the distance in feet between the antenna site and the nearest point on the runway.

Distance from nearest airport runway=---------- feet.

Step 4. Determine the maximum allowable height of the antenna installation *above the nearest airport runway.* This is done by dividing the distance between the antenna site and the runway (determined in step 3), by 100.

Maximum allowable height of antenna installation above nearest airport runway (within the 60 feet above antenna site ground level limitations).

(divide) ------/100 (from step 3)=---------- feet.

Step 5. Determine the maximum allowable height of the antenna installation above mean sea level. This is done by adding the height determined in step 4 to the elevation of the runway determined in step 2.

Maximum allowable height of the antenna installation above mean sea level.

---------- feet AMSL (from step 2)

(add) +---------- feet (from step 4)=---------- feet AMSL.

Step 6. Determine the maximum allowable height of the antenna installation above ground level. This is the maximum vertical distance from the topmost point of the antenna installation above the ground level immediately below that point. This is done by subtracting the elevation of the antenna site (determined

in step 1) from the maximum allowable height of the antenna installation above mean sea level (determined in step 5).

Maximum allowable antenna height above ground level (MAAHAGL)

---------- feet AMSL (from step 5)

(subtract) —---------- feet AMSL (from step 1)=---------- feet.

NOTE.—In no case may the MAAHAGL exceed 60 feet! In case the elevation of the antenna site (determined in step 1) exceeds the maximum allowable height of the antenna installation above mean sea level (determined in step 5), the MAAHAGL shall be 20 feet.

APPENDIX B

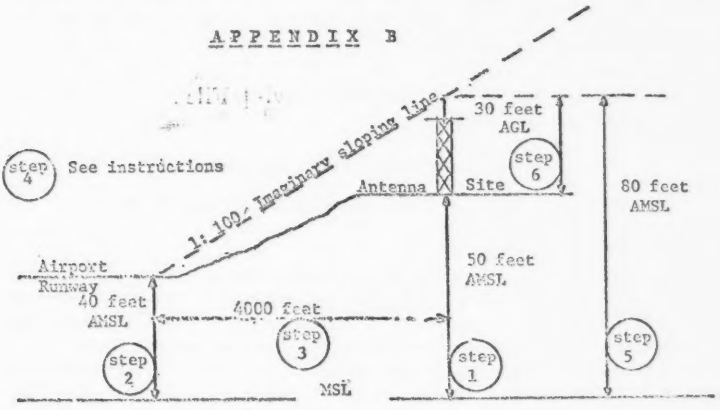

Figure 1. Elevation of antenna site above elevation of runway.

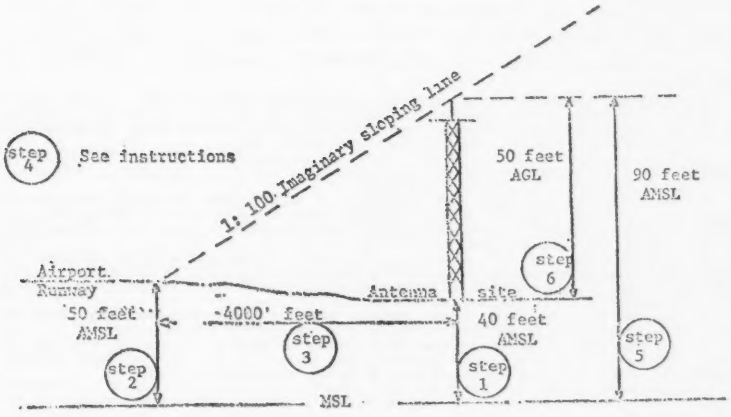

Figure 2. Elevation of antenna site below elevation of runway.

F.C.C. 73R-302

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
A. H. BELO CORP. (WFAA-TV), DALLAS, TEX.	Docket No. 19744
For Renewal of Broadcast License	File No. BRCT-33
WADECO., INC., DALLAS, TEX.	Docket No. 19745
For Construction Permit for New Television Broadcast Station	File No. BPCT-4455

MEMORANDUM OPINION AND ORDER

(Adopted August 23, 1973; Released August 24, 1973)

BY THE REVIEW BOARD:

1. This proceeding involves the mutually exclusive applications of A. H. Belo Corporation (Belo), for renewal of license for Station WFAA-TV, Dallas, Texas, and WADECO, Inc. (WADECO) for authorization to construct a new television station on the same channel in the same community. The applications were designated for hearing by Commission Order, 40 FCC 2d 1131, released May 24, 1973. Now before the Review Board is a petition to enlarge issues, filed June 14, 1973, by WADECO,[1] requesting the addition of several issues inquiring into Belo's equal employment opportunity program and 1971 Annual Employment Report.[2]

2. In its petition, WADECO alleges that Belo misrepresented certain facts to the Commission concerning: (a) the WFAA-TV 1971 Annual Employment Report; [3] (b) the WFAA-TV equal employment opportunity program; [4] and, (c) the implementation of WFAA-TV's equal employment opportunity program. According to

[1] Also before the Board are: (a) opposition, filed June 27, 1973, by Belo; (b) opposition, filed June 27, 1973, by the Broadcast Bureau; (c) supplemental certificate of service, filed June 28, 1973, by the Bureau; and (d) reply, filed July 10, 1973, by WADECO.

[2] WADECO seeks addition of the following issues against Belo:

(1) To determine whether A. H. Belo Corporation, licensee of WFAA-TV, Channel 8, Dallas, Texas, has falsely certified or misrepresented facts to the Commission concerning the 1971 Annual Employment Report of WFAA-TV;

(2) To determine the facts and circumstances surrounding the equal employment opportunity program and policies of A. H. Belo Corporation, licensee of WFAA-TV, and whether or not WFAA-TV has falsely certified or misrepresented facts to the Commission concerning its program and policies;

(3) To determine the facts and circumstances concerning the implementation of WFAA-TV's equal employment opportunity program and policies, and whether or not WFAA-TV has falsely certified or misrepresented facts to the Commission concerning the implementation of its program and policies.

(4) To determine in light of the evidence adduced under the preceding issues if A. H. Belo Corporation is qualified to remain a licensee of the Commission.

(5) To determine in the event that it is concluded that A. H. Belo Corporation is qualified to remain a Commission licensee, what impact, if any, the evidence adduced under issues (1), (2), and (3) would have upon its comparative evaluation.

[3] Section 1.612 of the Commission's Rules requires that each licensee of a broadcast facility with 5 or more full-time employees shall file an annual employment report (FCC Form 395).

[4] Section 73.793 provides, *inter alia*, that an applicant for renewal of a television license shall file a program designed to provide equal employment opportunities for minority groups, and women, or an amendment to such program if it has been filed previously.

WADECO, Belo represented in the WFAA–TV renewal application that two minority group members were employed in trainee positions whereas the WFAA–TV Annual Employment Report, filed eleven days after the renewal application, failed to list any on-the-job trainees, minority or otherwise. Petitioner further alleges that, in an amendment to the WFAA–TV renewal application, filed on June 30, 1971, entitled "Voluntary Statement on Minority Employment and Programming," [5] Belo represented that by June 30, 1972, WFAA–TV would "achieve a full-time minority group employment of at least 15% of its total full-time staff;" that as of April 20, 1972, only 10.7% of WFAA–TV's full time staff were minority group members; and that as of April 26, 1973, only 11.9% of the station's full-time staff were minority group members. Finally, WADECO alleges that Belo failed to implement its equal employment opportunity program since, prior to its meetings with the Coalition, the station apparently did nothing to assure equal employment opportunities, contrary to the representations in the station's renewal application. In support of this allegation, WADECO alleges that WFAA–TV employed only 12 minority group members as of May 14, 1971, which represented 7% of the station's full-time staff. WADECO requests that an issue be added to inquire into this matter since it appears that Belo misrepresented the extent to which it was implementing its equal employment program.

3. Belo, in opposition, argues that the discrepancy between the WFAA–TV 1971 Annual Employment Report and its renewal application regarding the two on-the-job trainees was due to an oversight on the part of the station officials who prepared the report and that it intends to correct the report.[6] With respect to the June 30, 1971, amendment, Belo states that it never intended to establish "quotas and deadlines" for the employment of minority personnel and that such a practice was characterized as illegal by the station's legal counsel. According to Belo, it agreed with the Coalition to set "goals and timetables" for the employment of minority personnel and represented to the Commission that WFAA–TV would make a good faith effort to achieve these objectives.[7] Belo states that although its goal of 15% minority employment by June, 1972, may have been too optimistic, it does not follow that it misrepresented either its equal employment opportunity program or the implementation thereof to the Commis-

[5] The amendment was submitted to include in the WFAA–TV renewal application an agreement reached between Belo and the Greater Dallas-Fort Worth Coalition for the Free Flow of Information (Coalition), a minority group organization, regarding, *inter alia*, the station's employment of minority group members. In addition to the policy statement, the amendment contained a letter signed by an officer of Belo and two members of the Coalition, including the Chairman, Yvonne Ewell, which explained some of the terms set forth in the policy statement.

[6] Belo submits affidavits from Ward Huey, Vice President of Belo, and Jim Cooper, Vice President and Secretary of Belo. Huey states that during April and May of 1971 WFAA–TV employed two on-the-job trainees who were minority group members. Cooper states that the 1971 Annual Employment Report "contained an error by inadvertently omitting and failing to list two on-the-job trainees who were members of minority groups which WFAA–TV had in its employ and training program during the months of April and May 1971."

[7] The letter of agreement between WFAA–TV and the Coalition included the following language:

"Our counsel has advised us that so long as it is clearly understood that such 'Goals and Timetables' are not to be construed as constituting binding commitments on the part of WFAA–TV, but on the contrary are intended to represent an expression of our good faith intention to make our Equal Employment Opportunity program work, there is no legal objection to specifying goals and timetables on a voluntary basis."

sion.[8] Regarding the implementation of its equal employment program, Belo argues that the mere fact that it carried on discussions with the Coalition does not justify the inference that WFAA's employment practices were discriminatory, and that WADECO has placed a distorted interpretation on the negotiations which led to the June 30, 1971, amendment. The Broadcast Bureau also opposes WADECO's petition. According to the Bureau, it is unreasonable to infer that WFAA–TV was bound to achieve specific percentages of minority group employees by specific dates since Belo's amendment of June 30, 1971 makes it clear that quotas were not involved in the agreement. In reply, WADECO asserts that there are significant differences between WFAA–TV's equal employment opportunity policies and the limited action taken to effectuate these policies which indicate that Belo may not have been completely candid with the Commission.

4. The Review Board will deny all of the requested issues. In our view, WADECO has failed to raise any questions regarding the truthfulness or good faith of Belo's 1971 Annual Employment Report, its equal employment opportunity program or the implementation thereof. It does not appear to us that Belo misrepresented any facts to the Commission concerning its 1971 Annual Employment Report since, according to Belo, it inadvertently omitted to report that it employed two minority on-the-job trainees. In light of the uncontradicted affidavits submitted by Belo regarding this matter, and the fact that we have no reason to doubt the veracity of the affidavits, the Board does not believe that WADECO has raised a question concerning the WFAA–TV 1971 Annual Employment Report which warrants exploration in hearing.[9] Regarding Belo's June 30, 1971, amendment [10] to the WFAA–TV renewal application, we agree with Belo and the Bureau that the amendment clearly indicated that WFAA–TV would make a good faith effort to achieve 15% minority employment by June, 1972, and not, as alleged by WADECO, that the station would actually achieve 15% minority employment by June, 1972. Since the amendment was merely a good faith policy statement on the part of Belo and the Coalition, and since the Coalition is apparently satisfied that WFAA–TV has made a good faith effort to increase its minority employment, we find no basis for adding the requested misrepresentation issue. Finally, with respect to the implementation of WFAA–TV's equal employment program, we agree with Belo that its discussions with the Coalition and the resulting agreement do not justify the inference that WFAA–TV's employment policies were discriminatory or that Belo misrepresented the nature of its equal employment opportunity program to the Commission. The Commission encourages broadcast licensees and members of the public to engage in discussions regarding programming and minority employment instead of bringing such matters to the Commission's attention in the first instance. See *KCMC, Inc.* (*KTAL–TV*), 19 FCC 2d 109, 16 RR 2d 1067 (1969).

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[8] Belo submits an affidavit from Yvonne A. Ewell (see note 5, *supra*), wherein she states that WFAA–TV has made progress in achieving many of the goals set forth in the agreement, including minority employment.

[9] Belo amended its 1971 Annual Employment Report on June 26, 1973, to report that WFAA–TV employed two black males as on-the-job trainees in 1971.

[10] The Board notes that while the amendment was dated June 30, 1971, it was filed with the Commission on July 1, 1971.

Thus, in our view, it would be improper to infer that a licensee's existing equal employment opportunity program is inadequate merely because the licensee engages in negotiations with members of the public or, as in this case, a minority coalition. Such a claim must be supported by specific allegations of fact,[11] and WADECO has failed to do so.

5. Accordingly, IT IS ORDERED, That the petition to enlarge issues filed June 14, 1973, by WADECO, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[11] See Section 1.229(c) of the Commission's Rules.

F.C.C. 73R–309

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of BELO BROADCASTING CORP. (WFAA–TV), DALLAS, TEX. For Renewal of Broadcast License	Docket No. 19744 File No. BRCT–33
WADECO, INC., DALLAS, TEX. For Construction Permit for New Television Broadcast Station	Docket No. 19745 File No. BPCT–4453

MEMORANDUM OPINION AND ORDER

(Adopted August 28, 1973; Released August 29, 1973)

BY THE REVIEW BOARD:

1. Belo Broadcasting Corporation has filed a second motion to enlarge issues so inquiry can be made whether Wadeco, Inc., has complied with Section 1.65 of the Rules, has misrepresented facts to the Commission relating to the availability of a loan, and has the necessary qualifications to be a Commission licensee.[1] The petition was not filed within the fifteen day period allowed by Section 1.229(b) of the Rules and so is untimely, but the Board finds that good cause for the late filing has been shown. Much of the factual information upon which the petition is predicated was acquired at a deposition session held on June 29, 1973, in Dallas, Texas, and the petition was filed promptly thereafter. The Board does not view the depositions as having been conducted to ascertain whether grounds exist for enlargement which would have been contrary to the Commission's ruling on this subject when it adopted the discovery procedures,[2] so we reject Wadeco's opposition in this regard.

2. The 1.65 issue is requested on the basis of Wadeco's failure to report that two of the persons who had agreed to endorse notes to be issued by the corporation in obtaining a bank loan were released from their agreements at the times they withdrew as stockholders and subscribers of the corporation. Their withdrawal as stockholders and subscribers was reported to the Commission, and Wadeco, in opposition to the petition, contends that this "was sufficient notice that their endorsements of any notes would not be forthcoming." Under other circumstances, the Board might agree with Wadeco's explanation, but the present situation requires a different result. Wadeco's reliance upon a bank loan from Castle Trust Company has been under question by the Commission since well before the case was designated for hearing, and Wadeco has stoutly maintained, during all this time, that

[1] Belo's petition to enlarge was filed July 20, 1973; Wadeco filed an opposition August 2, 1973; the Broadcast Bureau's comments were filed July 31, 1973; and Belo's reply was filed August 8, 1973.

[2] *Discovery Procedures*, 11 FCC 2d 185, 187 (1968).

the loan would be forthcoming, even as recently as June 14, 1973, when it sought deletion of the financial issue against it.[3] The released endorsers are named in the April 4, 1972, bank letter as two of those whose endorsements would be required, and they were two of the most important endorsers in terms of liquid assets available to them. Their absence from the endorsing group raises additional serious questions whether the bank loan would be available to Wadeco. Under these circumstances, the substantial and significant change in Wadeco's financial showing entailed by the release of these two endorsers required specific notification rather than leaving the conclusion to be inferred from other facts which were reported. A 1.65 issue will be added.

3. The Board is also persuaded that the inclusion of a misrepresentation issue is warranted. As already noted, Wadeco continued to maintain that the necessary loans would be forthcoming through Castle Trust, even though it has known since October of 1972 that the condition of the bank's commitment, as set out in the letter of April 4, 1972, could not be met. For the foregoing reasons, the Board will add the 1.65, misrepresentation and qualification issue as requested by Belo.

4. Accordingly, IT IS ORDERED, That the second motion to enlarge issues, filed on July 20, 1973, by Belo Broadcasting Corporation IS GRANTED, and that the issues herein ARE ENLARGED by addition of the following issues:

To determine whether WADECO, Inc. has failed to comply with the requirements of Section 1.65 of the Commission's Rules;

To determine whether WADECO, Inc. misrepresented facts to the Commission in connection with the availability of a $2,500,000.00 loan from the Castle Trust Company Limited, Nassau, Bahamas; and

To determine whether in the light of the evidence adduced under the preceding issues WADECO, Inc. is qualified to be a licensee of the Commission.

5. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence on the first two issues is on Belo Broadcasting Corporation and that the burden of proof as to all the added issues is on Wadeco, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[3] The request to delete was denied by the Board on July 27, 1973, FCC 73R-279, —— FCC 2d ——, released July 31, 1973.

104-008—73——2

F.C.C. 74-741

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of BOB JONES UNIVERSITY, INC., GREENVILLE, S.C. For renewal of license for Stations WMUU-AM and FM	File Nos. BR-2377 and BRH-1104

JULY 5, 1973.

BOB JONES UNIVERSITY, INC.,
Radio Stations WMUU and WMUU-FM,
Wade Hampton Boulevard,
Greenville, S.C. 29614

GENTLEMEN: This is in reference to your applications for renewal of license for Stations WMUU and WMUU-FM, Greenville, South Carolina (File Nos. BR-2377 and BRH-1104, respectively).

As you are aware, the broadcast license renewal applications for Stations WMUU and WMUU-FM have been on a deferred status since June 1970 due to a request by the United States Commission on Civil Rights that this Commission determine whether the stations are (1) in compliance with Commission rules prohibiting employment discrimination and (2) adequately serving community needs.

In response to the Commission's request that you submit an equal employment opportunity program for Stations WMUU and WMUU-FM, you submitted information indicating that you have adopted a written employment policy for the stations that will be carried on in a nondiscriminatory manner; that appropriate notices concerning your nondiscrimination policy and advising employees and applicants of their rights have been posted on station bulletin boards and included in employment application forms; that you will advertise job openings in printed media that have significant circulation among minority groups and women, such as the Greenville News Piedmont and the Orangeburg Herald, a black newspaper in the State; that you have been and will continue to develop contacts for the referral of qualified applicants from individuals, leaders, and spokesmen of local churches having significant membership of minority groups and women, such as the Maranatha Baptist Church of Greenville, Truth for Youth Rally and Negro Youth Fund, and the Donald L. Jackson Foundation of Buffalo, New York; that, when necessary, schools and colleges with significant enrollments of minority groups and women such as the predominately black Carver Bible Institute and College, Atlanta, Georgia, the integrated Greenville County Schools, and Greenville TEC, will be visited and interested applicants interviewed; and that present employees will be encouraged to refer qualified minority applicants to apply for available positions. You further state

that individuals making decisions on employment, placement, promotion, training, demotion, layoff, working conditions, rates of pay, fringe benefits and overtime work have been and will be instructed that such decisions are to be made without discrimination; that job areas where there is little or no minority or female representation will be reviewed periodically to see if this results from discrimination; that women and minority group employees will be given equal opportunity for jobs leading to higher positions; and that inquiries will be made periodically as to the interests of lower-salaried employees, with assistance, counselling, and effective measures to qualify them for higher positions.

The steps set forth above to make job opportunities available to black applicants comprise the type of program contemplated by the requirements in our rules for the adoption of an equal employment opportunity program. However, we must also take note of the fact that in the past the licensee has relied heavily on recruitment at Bob Jones University, a school that deliberately excludes black students. We do not believe it is sufficient for this licensee to make an effort to open up job opportunities to black applicants—nor do we believe that it is hiring on a genuinely "equal employment opportunity" basis—if, at the same time, it continues recruitment at this school. This is not to say that a Bob Jones student should suffer any disability or prejudice if he seeks employment at these stations; we hold only that affirmative recruitment must exclude this institution whose doors are deliberately closed to black applicants and that *bona fide* affirmative recruitment efforts be maintained and continued at sources outside the University. Precluding recruitment by the licensee at the University includes such activities as advertising job openings on University bulletin boards, contacting the Communications Department concerning such openings, and recruitment visits to the University.

Further, it is not just that the stations' affirmative recruitment efforts include such organizations and schools as those previously listed. For, in any event, this case does not turn merely on form—on the licensee making the "right motions"—but rather on substance, i.e., on its actual roster of employees. Counsel for the University has advised the Commission that as of June 5, 1973, the staff of the stations consisted of 10 full-time employees (including two black women) and 3 part-time employees. Thus, it is noted that black employees constituted 20% of the full-time staff, a figure which exceeds the 1970 census statistic of 15.1% blacks in the Greenville Standard Metropolitan Statistical Area.

Concerning the licensee's efforts to ascertain and to meet the needs and interests of its area of service, it is noted that the stations present a specialized format of primarily classical and religious music, not otherwise available to Greenville audiences. Judging from the many letters received at the Commission, this format apparently meets a definite local need. A review of the licensee's September 1972 supplemental renewal applications discloses that the licensee interviewed approximately 85 community leaders and conducted a random survey by telephone of approximately 150 members of the public concerning community needs and interests. With respect to the survey of community leaders, 19 blacks were interviewed including a principal of a

school, ministers, minority community leaders, attorneys, businessmen and local officials. The licensee ascertained a number of community problems, the most pressing of which involved the increasing crime rate and problems of law enforcement. Other problems of local concern, as determined by the licensee, were those relating to drug abuse, welfare, education, health, housing, aging and retired persons, deterioration of the downtown area, need for more recreational areas, street repairs, trash disposal, and traffic. Based on its evaluation of these problems, the licensee proposed numerous programs or program series with the object of arousing public concern and informing the public of services that are available. Some of these programs involve interviews with community leaders consulted in the community needs survey and others whom the community leaders recommend, such as a series of interviews with black leaders who will be chosen by Dr. W. F. Gibson, a black who is co-chairman of the Mayor's Committee on Human Relations. The licensee also stated that it will provide other public affairs programs from outside sources such as "Dateline Israel" and "Stories of Black Americans." It is also noted that the licensee stated that because of the classical music format the stations provide the only local source for the recorded talents of numerous black musicians such as Leontyne Price, George Shirley, Ulysses Kay, Andre Watts, Shirley Verrette and others, and that the fact that these are heard consistently on the stations offers encouragement and stimulation to young black musicians who may be interested in studying serious music or to those who are just encouraged by hearing a member of their own race participating.

We are satisfied, therefore, that Bob Jones University has reasonably attempted to ascertain the needs and interests of its service area, has evaluated those needs and interests, and has enunciated program matter designed to address them. In this connection, we have also reviewed the licensee's past programming performance as it relates to local needs and interests. An examination of the September 1972 supplemental renewal applications shows that a number of programs were presented pertaining to problems of concern to the Greenville area and that some of the interview programs involved local minority community leaders.

In view of the foregoing, we have determined that the licensee should be granted a short-term license renewal for the period ending June 1, 1974. This will afford the Commission with an early opportunity to again review the licensee's policies and practices. In this respect, its compliance posture concerning equal employment opportunity will continue to be reviewed on the basis of the contents of the Annual Employment Reports (FCC Form 395), its equal employment opportunity programs, the extent of its adherence to the program, and its reasonable and good faith efforts to make the program work to improve the overall employment and promotional status of minorities and women. In this connection, the licensee will be required to submit to the Commission its affirmative action procedures each time it fills a position at WMUU–AM–FM between now and June 1, 1974.

Accordingly, IT IS ORDERED, that the applications for renewal of license for Stations WMUU and WMUU–FM are granted for a

short-term license period expiring June 1, 1974, subject to the following conditions.

(1) That affirmative recruitment of station employees is precluded at Bob Jones University;

(2) That *bona fide* affirmative recruitment efforts for minority groups and women be maintained and continued at sources outside the University; and,

(3) That the licensee will submit to the Commission its affirmative action procedures each time it fills a position at the stations between now and June 1, 1974.

Commissioners Nicholas Johnson, H. Rex Lee and Charlotte T. Reid concurring in the result. Commissioner Wiley not participating. Commissioner Benjamin L. Hooks concurring and issuing a statement.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

Concurring Statement of Commissioner Benjamin L. Hooks

This appears to be a classic case for a dissenting vote. Bob Jones University, a 100% owner of the licensee corporation, has repeatedly been cited by the federal government for violating federal civil rights law,[1] and yet it continues to operate a radio station. I concur because (1) the Commission has only granted a one-year renewal, (2) the licensee must report on each and every person hired between now and the expiration of the one-year term, (3) the full three-year term will be due for renewal three months after the expiration of the one-year grant herein authorized, and (4) the licensee is required to recruit employees from all eligible sources and to steer clear of its segregated university.

It is hoped that this sanction will enable this licensee in particular and other licensees generally to see the light by which this Commissioner will be looking for future compliance with all applicable laws of this country,[2] and especially our Equal Employment Opportunity rules. This is my first review of the performance of Bob Jones' stations and I anticipate meticulous examination of its status as a licensee after the one-year reprieve.

[1] The blatantly discriminatory practices of Bob Jones University have instigated several governmental actions: (1) since 1967, the University has been barred from receiving federal financial assistance from programs administered by the Department of Health, Education, and Welfare, (2) the Veterans Administration terminated the University's right to participate in Veteran's Administration programs by its decision of September 12, 1972, and (3) on July 10, 1970, the Internal Revenue Service issued a news release stating that it had concluded that it could no longer legally justify allowing tax exempt status to private schools which practice racial discrimination. Moreover, because of the University's non-compliance with Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000(d), the United States Commission on Civil Rights, by letter of October 23, 1969, stated that "in view of the fact that the airwaves that the University utilizes for its station are public, it would appear that the employment and admission policies of the University, as well as the engineering and program standards which it pursues, should be of concern to the Commission."

[2] See generally, the Commission's *Uniform Policy on Violations of Laws*, 1 R.R. 19:495 (1951).

F.C.C. 73-890

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 73 OF THE COMMISSION'S RULES WITH RESPECT TO THE AVAILABILITY OF TELEVISION PROGRAMS PRODUCED BY NON-NETWORK SUPPLIERS TO COMMERCIAL TELEVISION STATIONS AND CATV SYSTEMS.	Docket No. 18179

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1973; Released August 31, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID ABSENT.

1. The Commission has before it for consideration, the "Request for Stay" filed on August 16, 1973, by the Association of Maximum Service Telecasters (AMST) wherein it is requested that the Commission stay the effective date (September 7, 1973) of the First Report and Order (FCC 73-806, 38 Fed. Reg. 21265) in this proceeding pending action on its petition for reconsideration. Rust Craft Broadcasting filed a similar "Request for Stay" on August 23, 1973. Statements in support of the AMST Request for Stay were filed by the National Association of Broadcasters (NAB); Kelly Broadcasting Company (KCRA-TV, Sacramento, California); Kansas State Network (KARD-TV, Wichita, Kansas); and McGraw-Hill Broadcasting Company, Inc. (WRTV, Indianapolis, Indiana). Another pleading entitled "Comments of Kaiser Broadcasting Corporation on Request for Stay" was filed on August 23, 1973. All the foregoing parties state that they will file timely petitions for reconsideration.[1]

2. The First Report and Order adopted the new rule (Section 73.658 (m) of the Rules) concerning territorial exclusivity in non-network program arrangements which reads as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(m) *Territorial exclusivity in non-network arrangements.* No television station shall enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents or hinders another television station located in a community over 25 miles away, as determined by the reference points contained in Section 76.53 of this chapter, from broadcasting any program purchased by the former station from such non-network program producer, distributor, or supplier, or other person. As used in this sub-section, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

[1] On August 27, 1973, the Corinthian Stations, *et al.* filed a statement in support of the AMST request for stay, and Broadcast-Plaza, Inc. (WTIC-TV, Hartford, Connecticut) filed a separate request for stay on August 28, 1973.

NOTE: Contracts, arrangements, or understandings that are complete under the practices of the industry prior to August 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods—a tryout period and a period thereafter for general exhibition—may be extended or renewed as contemplated in the basic agreement.

Thus, territorial exclusivity in television non-network program arrangements is limited to 25 miles from the reference point (set forth in the rule) of the community of license of a television station.

3. AMST contends that the primary effect of the rule, rather than just making programs available for "overshadowed" cities, would be to prevent television "stations in at least 35 of the top 100 markets from obtaining exclusive rights against direct competitors in their very own markets." AMST is referring to the multi-city markets, whether the market is hyphenated or non-hyphenated, and states that such markets have been consistently treated as a single market by the marketplace, the networks, the rating services, the stations themselves and the Commission. AMST contends that the stations in these 35 or more markets are not overshadowed stations, but rather are direct competitors, that the rule would encourage program duplication, and that the effect of the rule is not consistent with the Commission's explicit recognition that exclusivity serves the public interest. AMST states that this general rule is not necessary to achieve the Commission's objective to assist stations in overshadowed markets in their attempt to secure non-network programming.

4. AMST also contends that the Commission's action will radically reduce exclusivity that television stations now have against cable television retransmission which was provided in the 1972 cable rules adopted in Docket No. 18397. The specific rule referred to by AMST is Section 76.153(c) of the Rules which provides that a station licensed to one city in a hyphenated market cannot obtain exclusivity against cable retransmission within the 35 mile zone (with certain exceptions) of any other designated community in the market unless it has secured over-the-air exclusivity against the stations licensed to the other community. It is contended that the parties did not have notice and opportunity to comment on this cable aspect of the proceeding because the last date for filing comments on the territorial exclusivity portion of this proceeding was March 10, 1969.

5. AMST states that it has standing to file this petition for reconsideration because it participated in the "time" exclusivity portion of this proceeding, and also participated extensively in the cable proceeding (Docket No. 18397). It is claimed that if the effective date of the rule is not stayed pending action on its petition for reconsideration, irreparable injury will be caused to television stations because contracts entered into between August 7, 1973, and the date on which the petitions for reconsideration are disposed of will be subject to the new rule even if the rule is modified on reconsideration. AMST points out that if a stay is granted, any contracts finalized during that period that specified territorial exclusivity greater than that permitted by the new rule could be made subject to all provisions of that rule (including the provision concerning the August 7 date) if the Commission does not

modify that rule on reconsideration, and that should parties negotiate contracts specifying exclusivity in excess of 25 miles, they would do so with the knowledge that any exclusivity exceeding 25 miles would have to be reduced. Thus AMST urges that the Commission should, at the very least, stay the rule as it affects the multi-city markets, and states that the Commission could tailor the stay so that its effect would not be applicable to the "overshadowed" markets.

6. Rust Craft, a licensee of both VHF and UHF stations, bases its request on the contention that the rule will hinder the development of all-channel television broadcasting as well as reduce exclusivity now permitted under the cable rules.

7. The NAB, Kelly, KSN, and McGraw-Hill statements are in full support of the AMST request for stay. Kelly, KSN and McGraw-Hill point out the specific problems concerning their own respective multi-city markets both as to over-the-air exclusivity and cable retransmission. Kaiser, a multiple UHF licensee, agrees with AMST's request that a stay should be granted, but objects to the AMST suggestion that the Commission could, if it grants the stay, except the "overshadowed" markets from the effect of the stay, because an exception as to "overshadowed" cities would discriminate against stations in a select few markets that are within 25 miles of the "overshadowed" markets.

8. While we are of the opinion that the parties could, by contract, adequately protect themselves from irreparable injury should the rule be modified on reconsideration, we believe the best course of action is to order a general stay of the rule for approximately sixty days to enable us to fully consider the material that the parties state they will submit on the multi-city market question (both as to over-the-air exclusivity and exclusivity against cable retransmission), and thereafter take whatever action, if any, is appropriate. It is true that the 1972 cable rules (Docket 18397) were adopted after the comments were filed in the territorial portion of this proceeding. So that as little disruption as possible of negotiations of contracts will occur, should the rule be modified in any respect, we shall grant a stay of the effective date of the rule until November 12, 1973. Of course, should the rule not be modified, all contracts finalized on or after August 7, 1973, will be subject to the rule as adopted on July 26, 1973.

9. In view of the foregoing, the requests for stay ARE GRANTED to the extent indicated above; and the effective date of Section 73.658 (m) of the Commission's Rules IS STAYED until November 12, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-874

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re request to
CHANNEL SEVENTEEN, INC., COLUMBIA, MO.
For Statement Concerning Future Policies as to Program-Length Commercials

AUGUST 16, 1973.

CHANNEL SEVENTEEN, INC.,
Licensee of Station KCBJ-TV,
14 South 7th Street,
Columbia, Mo. 65201

GENTLEMEN: This will refer to the two different chinchilla ranching programs broadcast by KCBJ-TV on seven occasions from June 17 through September 30, 1972.

Your response to the Commission's letter of inquiry, dated December 14, 1972, discloses that the program "National Chinchilla" was presented on June 17 and 25; July 16 and 24; and August 5 and 9, 1972; was sponsored by National Chinchilla, Inc.; and was furnished through the Sher & Jones advertising agency. The other program, "Royal American Chinchilla", was presented on September 30, 1972, was sponsored by Royal American Chinchilla, Inc., and was provided by the Galvin, Farris, Ross, Inc. agency. Both advertising agencies are located in Kansas City, Missouri. In the case of the "National Chinchilla" program, the identical program was broadcast on each of the six occasions.

Programs concerning chinchilla ranching that appear to be primarily designed to promote the commercial activities of the sponsoring firm have come to the Commission's attention with increased frequency in recent months. On May 23, 1973, the Commission admonished Weigel Broadcasting Company for its repeated broadcasts of the same 28-minute "Chinchilla Ranching" program over a two and one-half year period. *Weigel Broadcasting Co.*, FCC 73-565. On August 2, 1973, the Commission admonished Rush Broadcasting Corporation, licensee of WRBT-TV, for its broadcast of the identical chinchilla ranching program. *Rush Broadcasting Corp.*, FCC 73-844. In addition to this admonishment, the Commission today admonishes five other licensees for their broadcast of various chinchilla ranching programs. In all the above-referenced situations, the licensees have additionally had Notices of Apparent Liability filed against them for willful or repeated violations of Section 73.670 of the Commission's Rules, which violations attended the broadcast of the chinchilla ranching programs those li-

censees broadcast.[1] A notice of Apparent Liability has not been issued in this case solely because Section 503(b)(3) prevents the Commission from issuing Notices of Apparent Liability for apparent violations which occurred later than one year of the date of the violations' occurrences. Although violations of the Commission's Rules did occur, all but one of the violations took place over a year from today's date, and, therefore, no Notice of Apparent Liability for those violations can lawfully issue. Because, however, violations of Section 73.670 of the Commission's Rules were incurred during the period referenced and because the Commission finds that the station on each of the dates listed broadcast a program-length commercial, this admonishment is warranted.

An examination of the program logs which you submitted show that the program was entered on the log as "SA", which according to your logging definitions was meant to indicate "Sponsored Announcement." Immediately below designation, however, an entry appears stating that only 8½ minutes was considered commercial and the remaining 21 minutes was considered "Agr. Inst." or "Agricultural Instructional." Because, as discussed in more detail below, the Commission considers the entire duration of the program broadcast to be a program-length commercial, all 29 minutes of the program should have been logged as commercial and the program log should have indicated the entire program to be a commercial announcement in accordance with Section 73.670 (a)(2)(ii).

As noted earlier in the discussion of the apparent violations which attended the broadcast of "National Chinchilla and "Royal American Chinchilla", the Commission considers these programs to be entirely commercial and therefore violative of its policies in the program-length commercial area. The Commission believes these programs were program-length commercials because the purportedly non-commercial and acknowledged commercial portions were so interwoven that the entire program appears designed to promote the products and services offered by the programs' sponsors, National Chinchilla, Inc. and Royal American Chinchilla, and hence falls within that category of a single commercial message. Additionally, any informational, educational, or entertainment value the programs may contain is wholly incidental to the commercial promotion for the programs' sponsors and indicates that the licensee here has subordinated programming in the interest of the public to programming in the interest of salability.

Although the Notices of Apparent Liability and the accompanying admonishments issued today have pertained to the broadcast of chin-

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[1] These licensees are: United Television Co. of New Hampshire, licensee of station WMUR–TV, Channel 9, Manchester, New Hampshire; Turner Broadcasting of North Carolina, Inc., licensee of station WRET–TV, Channel 36, Charlotte, North Carolina; Midland Television Corporation, licensee of station KMTC–TV, Channel 27, Springfield, Missouri; WXON–TV, Inc., licensee of station WXON–TV, Channel 20, Allen Park, Michigan; and Mid New York Broadcasting Corporation, licensee of station WMTW–TV, Channel 8, Poland Spring, Maine. In all, the admonishments and the Notices of Apparent Liability considered in this proceeding involved four different chinchilla ranching programs, to wit: two "National Chinchilla" programs, tagged "NC 7012, Medium: 30:00 TV Program/Revision #9—Final/Approved by NAB 4/17/70," the same program considered in *Weigel* and *Rush*, *supra*, text, and "VTR–NC 6901–TV–30:00," a non-NAB approved script, both sponsored by National Chinchilla, Inc. and furnished through the Jackson Waterbury & Company and Sher & Jones, Inc. advertising agencies; Royal American Chinchilla," tagged "30 Minute VTR RAC–0972–1," a non-NAB approved script, sponsored by Royal American Chinchilla, Inc., furnished through the Galvin, Farris, Ross, Inc. advertising agency; and "B&B Chinchilla," sponsored by B&B Chinchilla, Inc., a non-NAB approved script, furnished through the F. Thomas & Associates advertising agency, which included a 14-minute program and two 10-second promotional announcements.

chilla ranching programs, any broadcast of program-length commercials, whether or not such broadcasts have as their subject chinchilla ranching, cause the Commission grave concern. As we stated in our Public Notice, "Program-Length Commercials," FCC 73–215, 39 FCC 2d 1062, 26 RR 2d 1023 (1973), sent to all licensees:

> Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved . . .

We stated further:

> In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspect of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.
>
> This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

The Commission has found that the questioned programs constitute program-length commercials since each broadcast appears to have been presented to promote the products and services of National Chinchilla, Inc. and Royal American Chinchilla, the programs' sponsors, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained therein.

Although the broadcasts of the program-length chinchilla commercials on KCBJ–TV ceased before the above Notice was issued, you had been put on notice by many Commission rulings of our policies with respect to this subject.[2] Nevertheless, it appears that by broadcasting these programs seven times during the above-referenced period, you exhibited a pattern of subordinating programming in the public interest to programming in the interest of salability, and that by broadcasting at least 29 minutes of commercial advertising in a single hour each week, you disregarded the representation made in your last renewal application that you would normally present no more than 16 minutes of advertising per hour.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement to the Commission as to your future policies and procedures regarding the broadcast of program-length commercials. Your response and the operation of the station in the ensuing months will be considered, along with all other

[2] Those Commission rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972).

pertinent information relating to your qualifications to remain a licensee, will be considered in connection with your next renewal application.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

F.C.C. 73-883

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of COMMUNICATIONS SATELLITE CORPORATION	Files Nos. 17-CSS-P-(3)-73, 130-CSG-P-73, 131-CSG-P-73
ITT WORLD COMMUNICATIONS, INC.	Files Nos. 18-CSS-P-(3)-73, 141-CSG-P-73, 142-CSG-P-73
RCA GLOBAL COMMUNICATIONS, INC.	Files Nos. 19-CSS-P-(3)-73, 143-CSG-P-73, 144-CSG-P-73
WESTERN UNION INTERNATIONAL, INC. Application for Authority To Participate in the Construction and Operation of a Communications Satellite System To Provide Communications Services to the Department of the Navy and to Commercial Maritime Users	Files Nos. 20-CSS-P-73, 145-CSG-P-73, 146-CSG-P-73

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1973; Released August 30, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID ABSENT.

1. On April 16, 1973 the Commission released a *Memorandum Opinion and Order*[1] in which it granted the Communication Satellite Corporation (Comsat) a partial waiver, pursuant to Section 319(d) of the Communications Act, of a construction permit to permit it to proceed with the construction of three satellites to be part of a system intended to provide maritime service to the Department of the Navy starting September 1, 1974 and to other users of maritime service. Such partial waiver was conditioned, however, on, among other things, Comsat's amending its applications for authority to construct and operate the space and earth segments of the proposed system within 10 days "to provide that any U.S. common carrier now providing services via a public correspondence station in the Maritime Mobile Service may participate with Comsat in the entire proposed maritime system. . . ." The Commission further specified the manner and timing of any applications to be filed by eligible carriers, and made provision for the filing of comments on such applications.

2. Although Comsat failed to file the required amendments within the time period set out, it did file such amendments on May 4, 1973,

[1] 40 F.C.C. 2d 496 (1973).

together with a request for reinstatement of the partial waiver. By *Memorandum Opinion and Order*,[2] released May 15, 1973, the Commission found that the amendment met the basic objectives of its prior decision, accepted it for filing, and reinstated the partial waiver.

3. Applications to participate in the system were timely filed by RCA Global Communications, Inc. (RCA), ITT World Communications Inc. (ITT) and Western Union International, Inc. (WUI).[3] TRT Telecommunications, Inc. (TRT) filed comments.[4]

4. RCA, in its application, indicated that it is prepared to initially take 12.5 percent ($9 million) of the required system investment,[5] on the understanding that it will have an opportunity to review its position in light of additional technical and cost information to be developed,[6] the investment proposals submitted by other carriers, and the satisfactory determination of certain open issues.[7] RCA believes that each participant in the joint venture should share in the revenues derived from service to the Navy in proportion to its investment in the system and that each common carrier participant should be allowed to provide its services directly to its customers using its share of the system. Lastly, RCA submits that it is essential to consider the effect of the proposed satellites on the existing HF terrestrial marine system.

5. ITT requests authority to acquire a one-thirtieth (1/30) interest in the proposed system [8] based on the understanding that, in addition to those circuits required for services to the U.S. Navy, at least sixty teletype channels will be available for commercial maritime services. ITT deems this investment necessary to minimize the potential adverse impact on its present marine communications services and revenues and to keep abreast of technological developments.[9] ITT disagrees with certain conditions set forth in the Comsat amendment. First, ITT claims that it understood that investment in and use of the proposed satellite system would be subject to policies and rules applicable to other jointly owned communications facilities and disagrees with Comsat's alleged proposal to restrict voluntary transfers of ownership interests, even though such transfers would be subject to Com-

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[2] 40 F.C.C. 2d 1064 (1973).

[3] On June 8, 1973, public notice of these applications was given and, in addition to inviting comments on the applications, we specifically invited comments on WUI's eligibility to participate. Comments on these filings were received from Comsat, WUI and RCA. WUI replied to RCA's comments by letter, dated July 12, 1973, and RCA responded by letter, dated July 19, 1973. RCA responded to Comsat's comments by letter, dated July 13, 1973, and WUI and Comsat responded to RCA's reply by letters dated July 18, 1973, and July 25, 1973, respectively.

[4] TRT, by letter dated July 27, 1973, also responded to RCA's comments, and WUI, by letter dated July 31, 1973, responded to TRT's letter.

[5] RCA estimates that this investment will allow it to have sufficient commercial capacity in the system for it to meet its projected demand for maritime telex and telegram operations until 1980 and to meet whatever need exists in the later years of the system's life to provide high speed data and facsimile transmission facilities.

[6] By letter dated May 25, 1973, Comsat supplemented its applications for authority to construct the three satellites and two proposed earth stations by updating the space segment cost estimates included therein. This letter indicated a $6.34 million increase over the original estimates. Comsat further indicated that it would submit more definite cost information relating to the earth stations when it became available. RCA believes that additional information on further system cost overruns should be developed by the participants before final commitment to these risks and issuance of authorizations by the Commission.

[7] Although RCA refers to a number of unresolved issues, it does not specifically indicate in what manner it believes they should be resolved.

[8] According to Comsat's letter of May 25, 1973, referred to in footnote 6 above, the total-estimated system investment excluding shipboard terminals is $73.36 million. Thus a 1/30 or 3.3 percent investment would amount to approximately $2.45 million.

[9] ITT states that it is electing to so invest even though it has doubts about the economic feasibility and institutional makeup of the proposed system.

mission approval.[10] ITT urges that the Commission also reject Comsat's condition that all participants should be bound by Comsat's procurement of land-based facilities and suggests that sufficient time remains for organization of the consortium and for meaningful participation by all owners in the remaining arrangements. ITT further urges the Commission to condition any authorizations relating to this system so that Comsat and other carriers who do not have the burden of continuing terrestrial public coast station operations, do not, by reason of their participation in this system, acquire any rights, privileges or advantages insofar as the establishment of future or regular maritime services is concerned.[11]

6. WUI has tendered an application for authority to participate in the system. Although WUI does not presently provide high seas maritime service, WUI claims that it is eligible to participate under the terms and conditions of the April 16, 1973 *Memorandum Opinion and Order*.[12] WUI desires to participate in the system to the extent of a minimum of $2 to $3 million, ranging up to 4% of the total required investment.[13] It expects to participate in its *pro rata* share of system operating expenses as well as in the revenues received from the Navy. WUI, in noting that there will apparently be severe limitations on the capacity available for commercial services while the Navy services are being provided, recognizes that whether these limitations will inhibit meaningful competition remains to be explored. It suggests that the Commission proceed to authorize each eligible carrier to participate in the system but retain jurisdiction over arrangements pertaining to the commercial sector while those arrangements are further reviewed by the participants under Commission aegis.[14]

7. TRT, in its comments, says that the Commission, by not resolving certain questions relating to the proposed joint venture before requiring the carriers to decide whether they will participate, effectively

[10] ITT also expressed doubts about Comsat's willingness to cover all the required investment beyond that furnished by other eligible participants. This point has been clarified by Comsat in its comments, filed on June 14, 1973, on the carrier applications wherein Comsat expressly stated that it was prepared to assume that portion of system investment not subscribed to by others, under conditions set forth in Comsat's amended applications.

[11] ITT also urges that any Commission action taken with respect to this system be without prejudice to the right of established U.S. maritime carriers to cooperate with overseas entities in developing more efficient arrangements for serving their customers.

[12] The Commission is also in receipt of a letter from WUI, dated April 17, 1973, in which it advised the Commission that it considers itself eligible to participate in the joint venture and the reasons therefor. The substance of this letter is incorporated into part of WUI's application relating to its eligibility. This matter will be discussed *infra*.

[13] In subsequent comments, dated June 14, 1973, WUI refers to its $3 million investment approximating 4 percent of the total. No mention is made of the $2 million minimum investment. With respect to the commercial service, WUI indicates that it will provide all of its authorized services consistent with available capacity and will apply its expertise and computer switching technology to innovate new telex, data and facsimile services that are necessary to safe and efficient commercial fleet operations.

[14] In its June 14, 1973, comments, WUI reiterates this recommendation and suggests that, since the Commission has previously made clear that it was not prejudging future maritime industry arrangements, such retention of jurisdiction is the only condition that need be attached to forthcoming authorizations. WUI notes, however, that carrier investments in earth station and shipboard terminals will not be fully amortized at the end of the space segment service life and that equity dictates that carriers be given a fair opportunity for full amortization.

denied TRT a reasonable opportunity to participate.[15] TRT, however, indicated it would be inclined to commit itself to a substantial investment in the joint venture if: (a) Comsat is restricted to a carriers' carrier role; (b) the American Telephone & Telegraph Company (AT&T) is restricted to providing voice services;[16] (c) TRT is allowed to provide the full range of maritime services traditionally provided by international record carriers; and (d) TRT could anticipate that it would be allowed sufficient capacity in the proposed system. TRT argues that under Comsat's assumption that the Navy will exercise all of its contract options for service during the first three years of satellite service, only one voice grade channel in shore-to-ship direction will be available to be allocated among the joint venturers for commercial service. Thus, TRT continues, if it were to invest the minimum amount allowed, $1 million, it could subsequently be decided that such a share did not warrant being allocated any portion of the capacity in the shore-to-ship direction. It believes this would prevent TRT from providing two-way communications, thereby effectively precluding it from competing in the market. TRT further states that, since the Commission contemplates allowing Comsat to provide satellite services directly to maritime commercial users, Comsat will be able to participate in what appears to be the profitable aspects of the maritime services even though Comsat has not previously sustained any of the losses of the carriers presently providing terrestrial maritime services.[17] TRT concludes by suggesting that, in light of the foregoing, the Commission should require Comsat and/or the consortium to take over TRT's present service obligations and to acquire TRT's maritime facilities, or, at a minimum, that TRT should be allowed to discontinue its maritime business.

Comsat's Comments on Terrestrial Carriers' Applications

8. Comsat filed comments on June 14, 1973,[18] noting that no applicant had elected to assume a *pro rata* share and that the applied for shares totalled less than 20 percent. It indicated that it was prepared to assume, under the conditions set forth in its amended applications,[19] that portion of the system investment not subscribed to by others. In

[15] TRT states that if it does not participate in maritime satellite communications it has no alternative but to withdraw completely from the maritime communications industry. This conclusion is based on TRT's belief that its already unprofitable maritime services will become even more unprofitable with the establishment of maritime satellite communications. In this regard, TRT filed a letter, dated July 27, 1973, informing the Commission that it intends to file an application to terminate its existing Florida maritime operations immediately. It also suggests that if WUI is allowed to participate in the proposed system, such participation should be conditioned on WUI's taking over TRT's maritime operations. WUI, in a letter dated July 31, 1973, requests that the Commission regard TRT's comments untimely and irrelevant.

[16] It should be noted that AT&T is the only major carrier now providing marine communications service that did not file comments on, nor an application for, authority to participate in this system.

[17] TRT notes also that the Commission has not indicated whether, and to what extent, there will be any restrictions placed on the services that Comsat and the record carriers will be allowed to provide.

[18] On June 13, 1973, Comsat tendered for filing an amendment to its applications of March 5, 1973, substituting COMSAT General Corporation (Comsat General) for Comsat as the applicant. This amendment and a Comsat application for authority to transfer its construction permit waiver to Comsat General were placed on public notice on June 8, 1973.

[19] In this filing, Comsat reiterates that any restriction on Comsat's ability to offer a full range of services directly to end users would be unacceptable.

response to ITT, Comsat indicated that it did not intend to preclude voluntary transfers of investment shares under Commission authorization but that later share adjustments must be based on compelling circumstances. It would not be appropriate, Comsat states, for the Commission to permit the other participants to treat Comsat's larger share of commercial capacity as a pool from which they can draw whenever they have obtained commitments for more than their share of capacity. Comsat also believes it essential that participating parties assume a fixed percentage share of the total system costs at the outset, since a share based upon a maximum dollar investment would not be consistent with the joint participation concept and equitable sharing of risks. It notes that the capacity available to users other than the Navy cannot now be ascertained precisely, and suggests that the manner in which it may be divided is more properly a subject for the participants to resolve in connection with establishing the joint arrangements.[20] With respect to land based facilities, Comsat reiterates the position set forth in its May 4, 1973 amendment to its applications, that is, that the participants should jointly own, in proportion to their investment shares, the U.S. land based facilities used to provide services, but that the shipboard terminals should be dealt with on an individual basis.

9. Comsat states also it is essential that the participants be bound by all actions of Comsat that are undertaken in the interest of establishing the system in a timely manner and that the schedule requirements are such that procurement of the earth stations cannot be deferred for the period likely to be required to establish the consortium arrangements. Comsat claims that each participant must share fully in all costs and risks associated with the establishment, implementation and operation of the system as if it were jointly owned and operated from the outset. Comsat believes the other participants should not only reimburse Comsat for advances it makes for system development and construction prior to the establishment of joint arrangements, but should also compensate Comsat for the use of capital involved. It opposed the suggested integration of existing coastal facilities with this system—it being developmental in nature—as well as any participation conditioned on the resolution of other matters. Comsat urges the Commission to grant the applications in accordance with the terms and conditions specified in the Commission's April 16, 1973 *Order*, in Comsat's amended applications and in its comments and that, to the extent the carriers' applications are inconsistent with such terms and conditions, the authority granted should be conditioned on the carriers conforming thereto, while recognizing that certain administrative and operational matters must be resolved by the participants in establishing the consortium.

Reply by RCA

10. RCA, in response to Comsat, expressed concern about Comsat's making unilateral decisions before the joint venture is established, regarding system design and operating criteria which do not reflect the most effective application of satellite technology to the needs of mari-

[20] Comsat here notes that the allocation of specific numbers of teletype circuits will not be feasible in such arrangements.

104-008—73——3

time users. RCA specifically objects to Comsat's proceeding, prior to Commission decision on the earth station arrangements, with the procurement of the two proposed earth stations without consulting with the other probable participants, as well as to Comsat's apparent intention to integrate these ground facilities with its domestic satellite system. [21] RCA claims that Comsat should not freeze design specifications before the nature of the commercial maritime portion of the system is better defined and that the carriers should not be required to contribute to a system that may not respond to their requirements.[22]

Comments by Comsat and WUI on RCA's Reply

11. Comsat regards RCA's comments as untimely and unfounded. Comsat claims its actions have been consistent with the position set forth in its May 4, 1973 amendment, that is, that it intended to proceed, subject to required authorizations, to undertake all actions necessary to fulfill the Navy service requirements and that, as a condition of participation, all entities shall be so bound. It believes its actions have been consistent with the system and facility design included in its March 5, 1973 applications and with respect to which RCA, as well as other potential participants, were briefed following the May 4, 1973 amendment filing. Comsat asserts that the capacity allocation issue and the integration of existing HF facilities problem had been previously raised and views RCA's filing as an attempt to forestall those actions necessary to meet the Navy requirements. At present, and for the immediate future, Comsat claims that, since it has sole responsibility for meeting the Navy requirements, it intends to take all necessary actions required to carry out the Navy contract subject to required Commission authorizations. It believes that a cessation of all activities pending industry discussions, as RCA implicitly suggests, would jeopardize the Navy/Maritime program, and urges the Commission to reject RCA's contentions as being inconsistent with the premises under which Comsat was authorized to implement the program.

12. WUI, while agreeing with RCA that Comsat should not proceed unilaterally, views the thrust of RCA's remarks as designed to disrupt the joint venture if favored six weeks previously. WUI reiterates the recommendation contained in its application that the proposed system be further reviewed, under Commission aegis, by carrier participants prior to any final Commission determination. In the meantime, WUI suggests, the Commission should proceed to authorize each eligible carrier to participate in the consortium, and to retain juris-

[21] RCA asserts that Comsat, on July 13, 1973, issued an RFP in connection with procuring these ground stations "to be used for TT&C functions associated with either the Comsat domestic satellite system or the Navy/Maritime system or both, and to provide the communications service capability for the Navy/Maritime system." Here RCA also reiterates an assertion made in its application that it is both necessary and appropriate to look at the entire marine communications industry in planning the most effective use of the Navy/Maritime system.

[22] To establish that a relationship exists between present HF operations and the proposed satellite services, RCA maintains that certain ships will have to be able to operate via either the HF or the satellite medium, that the maritime industry must have an option to use HF as a back-up or as an alternate to satellite service, that there will have to be some relationship between HF and satellite rates to avoid discriminating against small users not using satellite services and, lastly, that it expects customers will want to be billed for both modes of communications in a single statement.

diction in order to finalize arrangements. WUI notes that RCA's position is counterproductive, that is, the longer RCA delays the consortium formation, the greater opportunity Comsat will have for unilateral decisions in developing the system framework.[23]

Pleadings on WUI's Eligibility

13. RCA filed comments, dated July 8, 1973 challenging WUI's eligibility to participate in the ownership and operation of the Navy/Maritime system.[24] RCA claims that the intent of the Commission's April 16, 1973 *Order* was to limit participation in the proposed system to Comsat and carriers currently engaged in " 'public coast station operations, using MF and HF radio facilities,' " [25] which operations WUI does not conduct. Equitable considerations, RCA continues dictate that WUI should not be permitted to participate in the proposed system unless such participation is conditioned on WUI's assuming a fair share of losses associated with the continuation of MF and HF coast station operations.[26]

14. In its reply, dated July 12, 1973, WUI states that RCA's comments are invalid and untimely.[27] It notes that, in view of Comsat's assumption of that portion of system investment not subscribed to by other applicants, Comsat, not RCA, would gain the share for which WUI has applied and yet Comsat has not opposed WUI's entry.[28] WUI questions whether RCA is opposing its entry in order to restrain competition in the communications equipment area, including competition in the supply of shipboard terminals and other maritime satellite equipment. WUI concludes that, since both it and RCA are statutorily precluded from an ownership role in the INTELSAT system, if RCA, and not WUI, was accorded ownership in the Navy/Maritime specialized system, RCA would be better positioned for an ownership role in future specialized international satellite systems.

[23] WUI suggests that if RCA has second thoughts concerning the consortium, it should consider withdrawing its application rather than disrupt the joint venture.

[24] In its application and letter of April 17, 1973, WUI claims, among other things, that its eligibility is consistent with the Commission's April 16, 1973, decision insofar as it seeks to maintain competitive equality by neither prejudging the maritime communications industry's future arrangements nor according a favored position to any one potential future applicant for authority to provide maritime satellite communications and by affording all carriers who have demonstrated their interest in Navy/Maritime communications an opportunity to participate in this developmental program.

[25] 40 F.C.C. 2d 496, 505 (1973).

[26] WUI's only possible claim to eligibility, RCA states, is its ownership of a subsidiary which is a licensee of a public coast (VHF) radiotelephone station providing ship-shore common carrier service in Florida. RCA claims, however, that this subsidiary is a carrier in its own right and therefore, it, and not WUI, if either, should be the applicant. It was not the Commission's intent, RCA continues, that the operator of a single line-of-sight (VHF) facility be eligible to qualify for participation in a worldwide maritime system.

[27] RCA, by letter dated July 19, 1973, in responding to WUI's contention that its comments was untimely notes that no specific time was fixed in which to respond to the Commission's June 8, 1973, public notice that WUI had tendered an application for filing. RCA further contends that the time to file oppositions to WUI's application on its merits did not run from the time of the aforementioned public notice nor from the time established in the May 15, 1973, Order, but from the date of public notice of acceptance of WUI's application for filing.

[28] WUI also finds RCA's suggesting that, as a condition to WUI participation, a joint venture should be established in terrestrial operations, through which WUI would share in the associated losses, inconsistent with RCA's advocacy of a competitive approach to commercial maritime satellite services. It also questions whether RCA would also have Comsat participate in such an arrangement.

Discussion

15. We have reviewed the Comsat amendment, the applications filed by ITT, RCA and WUI, the comments filed by TRT, and the several related pleadings. It appears that ITT, RCA and WUI, although aware of unresolved questions, take the position that they will participate in a joint venture with Comsat in the contemplated developmental maritime system. It therefore seems appropriate at this time to act on their applications, amend the partial waiver granted to Comsat, and to permit the joint venture contemplated by our April 16, 1973 *Order* to move ahead. We propose acting on the applications for construction permits in the near future, after allowing participants in the joint venture an opportunity to reach agreement on the joint venture's *modus operandi* and to consider unresolved substantive questions prior to any consideration of such questions by the Commission. This course will allow participants an opportunity to participate in decisions relating to the system at an earlier time than if we deferred formation of the joint venture until all questions had been resolved.[29]

16. The WUI application presents a threshold question pertaining to WUI's eligibility to participate in the proposed system. In our April 16, 1973 decision allowing Comsat to proceed at its own risk with the construction of the space segment for the proposed maritime system on condition that it amend its applications to allow certain carriers to apply for an ownership interest in such system, we recognized that the Comsat proposal, if implemented, would not involve a permanent commercial system, but rather a limited temporary one that would have a small, albeit increasing, amount of capacity available for maritime users other than the Navy. We noted that implementation of such a developmental system would assist in defining maritime satellite system parameters, spotlighting technical difficulties, and testing the acceptability of maritime satellite service, as well as in determining the economic impact of such a system on present maritime services. Aware of allegations that a maritime satellite system might adversely affect those existing maritime services, the Commission felt it appropriate to allow those carriers now engaged in high seas maritime services an opportunity to participate in the developmental aspects of maritime communications via satellite.

17. While it is argued that this consideration may not apply to WUI, since it does not, either itself, or through a subsidiary, offer high seas maritime service on a regular basis at the present time, it appears

[29] We note that TRT takes the position that it—and presumably the other terrestrial maritime carriers—is effectively denied a reasonable opportunity to participate in the joint venture by reason of certain matters being unresolved which it believes are critical to a decision on this point. With respect to the first such matter—the capacity that could be allocated—we think that it is impossible to determine this at this time, since it turns, at least in part, on the quantum and length of service taken by the Navy, and the relative investment made by each participant. Insofar as direct service by Comsat to users is concerned, we think, as will be set out below, that our April 16, 1973 *Order* disposed of this question. Insofar as service by AT&T is concerned, we would point out that it has not applied for participation in the joint venture or filed comments thereon. The last question—the range of services that TRT may offer—is one which TRT does not clearly explain in its pleading. It is our present intention to authorize each carrier to provide such services as can be shown to be in the public interest. TRT further indicates that, since it has not been given a reasonable opportunity to participate, the Commission should require Comsat or the consortium to take over TRT's present terrestrial operations or permit discontinuance of such operations. The first point is discussed *infra*; with respect to the second, any argument made by TRT would be considered by us on a properly filed application for discontinuance of services.

that other considerations related to the developmental system are relevant to a consideration of WUI's desire to participate in such a system. We were aware of the concern expressed that Comsat, as sponsor of the developmental system, not thereby be given any basis for claiming a favored position in providing maritime satellite services on regular basis, and we accepted this premise. On the other hand, WUI now expresses concern that its exclusion from present participation could place it at a disadvantage it does not presently have with respect to such future service on a regular basis, and argues that it has a legitimate interest in such communications which justifies its inclusion in the joint venture. We tend to agree, after reviewing WUI's position as a common carrier providing overseas services via satellite as well as cable, its provision of satellite maritime services, albeit on an occasional basis, via the INTELSAT system, and its general interest in satellite technology. We think the inclusion of WUI in the joint venture would further the achievement of the purposes of the developmental system and will so grant its application. In so doing, we note that no carrier presently providing high seas service has taken up its *pro rata* share of the system, so that our action will not prejudice them in this respect.

18. RCA and TRT suggest that we condition any decision allowing WUI to participate in the developmental maritime satellite system on a requirement that it assume certain existing maritime operations or financial obligations with respect to such operations. It is also suggested that Comsat or the joint venture assume such operations. Although such a condition is urged on the ground of equity, it does not appear that, at least at present, there is a realistic basis for such belief. As we pointed out in our April 16, 1973 decision, the satellite system we are concerned with is a developmental one, with an as yet undetermined capacity, which may be minimal, available for commercial users other than the Navy. Our concern with the effect of a maritime satellite system on existing high seas services lay not so much with the initial developmental phase of maritime satellite communications as with any follow-on phase involving regular service. The concept of a joint venture originated in our belief that present high seas maritime service carriers should be given an opportunity to take full advantage of the progress in the field, which ultimately, but not necessarily in its initial developmental stage, could have adverse effects on the existing service. We further note that we are examining the future of present high seas maritime services, including the effect on them of satellite communications, in the context of our *Public Coast Station Inquiry*,[30] and propose in that inquiry to address solutions to such problems as may exist. However, to preserve our freedom of action to meet future circumstances as they may arise, we shall reserve jurisdiction herein in this aspect of the matter.

19. Returning now to the principal thrust of our decision herein, as noted above we see no reason to delay any further the formation of a joint venture. Comsat has proceeded with the contract for the construction of three modified Telesat-type satellites with Hughes Aircraft Company pursuant to the partial waiver of a construction permit re-

[30] Docket No. 19544.

instated by our May 16, 1973 decision and apparently has plans to procure the two earth stations proposed in its applications, one at Santa Paula, California and the other at Southbury, Connecticut. All three record carrier applicants have expressed concern that, while they have been briefed by Comsat on certain matters, Comsat is making, or will shortly make, unilateral decisions at this stage of system development which would determine operational and service parameters that might be undesirable from their point of view. They therefore seek to have a voice in any future decisions that may be made with respect to the system. The Commission recognizes the importance of these allegations yet feels that not until each carrier applicant is financially committed to the system and contractually committed toward meeting the Navy service date, will it be in a position to properly pursue its point of view.

20. In order to allow all interested carriers opportunity to properly participate in system planning and development, we are granting the applications of ITT, WUI and RCA to participate in the Navy/Maritime system and will make them parties to Comsat applications for related construction permits, and joint holders, along with Comsat, of the partial waiver granted to Comsat.[31] Such participants will thus assume the consequent financial obligations with respect to the system [32] and will be considered joint applicants before the Commission for construction authority for the space and earth segments.

21. We think the participants should promptly meet to reach agreement on the manner in which the consortium is to operate, reach decisions, and implement such decisions. The consortium agreement should be submitted to the Commission for approval within two weeks of the release date of this decision, and if full agreement is not reached, a report of the status of negotiations should be submitted with sufficient detail to allow the Commission to take appropriate action. In formulating the *modus operandi* agreement mentioned above, and in, implementing such agreement the parties should conform to the guidelines set out herein below. With respect to the functioning of the consortium, we think basic policies on financial, operational and technical matters should be discussed by the members of the consortium, and to the extent possible, be the subject of agreement. Should the parties be unable to agree, then we would anticipate that, after making a reasonable effort to reach such agreement, decision would be taken by vote, with the weight of each participant's vote determined by the

[31] The Commission has not yet acted upon Comsat's pending application for authority to transfer its partial waiver to its wholly-owned subsidiary, Comsat General. Appropriate action with respect to that application will be taken upon the resolution of certain matters not directly related to the subject applications and pleadings.

[32] Each participant will be financially responsible under the partial waiver, and upon a grant of necessary license authority for the fixed percentage of total system investment for which it applied or to which it consented (Comsat–80.2%, RCA–12.5%, WUI–4%, and ITT–3.3%). In keeping with our previous determination that the licensed carriers will be permitted to participate fully in the entire system, each participant will be entitled to receive a fixed percent of the total revenues derived from the Navy contract. In regard to this first point, Comsat should give a full and documented accounting of all system developmental and construction costs to the joint owners who should reimburse Comsat for their proportionate share of such costs, prudently incurred by Comsat—all subject to such adjustments as may be required upon Commission review of these claimed costs. In this connection, we remind the parties that only those expenses directly associated with the applications before us should be claimed and not those which any carrier or Comsat incurred in proposals not now pending.

relative share of total investment it holds.[33] Of course, to the extent that Commission action is required on specific matters, dissenting parties may present their views before the Commission.

22. The initial Comsat filing in this matter was a system proposal which included applications for construction of the spacecraft and earth stations designed to meet the contractual obligations Comsat had with the Navy as well as to provide a limited amount of capacity for commercial maritime use. In our decision requiring Comsat to amend its applications to allow other carriers to participate, we indicated that we would allow Comsat to proceed, at its own risk, with the construction of the proposed facilities to meet the requested Navy service date. Comsat has done so and, up until this time, has had responsibility for the progress of the system's development, for insuring that the Navy contractual obligations will be met, and for financing the program's developmental and construction costs. With these considerations in mind, the Commission believes that the carriers participating in this joint venture, RCA, ITT and WUI, should be bound by the previous actions lawfully and prudently taken by Comsat in implementing its proposal. Of course, if Comsat agrees with the carriers that some aspect of the proposed system should be modified or changed, the participants will be able to amend the system applications filed by Comsat which have now become joint applications. No carrier, however, will be barred from raising questions about Comsat's position with the Commission. In this regard, we will require Comsat, immediately after the effective date of this *Order*, to take steps to apprise the carriers of the system's status, furnish them with all data relevant thereto and to schedule meetings for discussion and consideration of matters before decisions are taken, even though all arrangements to govern the joint venture have not been concluded.[34]

23. As noted previously, RCA, ITT and WUI have requested authority to participate in a certain percent of the ownership of the Navy/Maritime system with the understanding that Comsat would take up the remainder of the required investment. Comsat has stated that it will do so. None of the carriers seeking participation has requested, as allowed by our April 16, 1973 decision, a *pro rata* share of system ownership and, in fact, the requested carrier participation does not total 20 percent.[35] Comsat will thus assume a major share of the financial risk involved in the system [36] and we are of the opinion that its voice in managing and operating the system should be commensurate with its investment position. In light of this we feel that it is appropriate for the consortium to designate Comsat as system manager. As manager, Comsat will, subject to the requirements set forth in paragraph 22 above and such others as may be agreed upon by the consortium, be responsible to it for the day-to-day financial, operational and technical aspects of the system.

[33] The minutes of the consortium's meetings should be submitted to the Commission within five days after such meeting.

[34] It should be emphasized here that the Commission has granted neither a waiver of the construction permit requirement nor construction authority for the two earth stations proposed for this system.

[35] RCA has requested the largest share—12.5%; WUI has requested 4%; and ITT—3.3%.

[36] Comsat's share of system investment and expenses will be 80.2%.

24. The satellite capacity available for commercial maritime usage will, if feasible, be allocated among the joint owners in proportion to their ownership shares in the entire system in order to enable each joint owner to individually tariff and market his services.[37] If, because of the limited capacity available for such usage, allocation of this capacity on an individual basis is not feasible,[38] the joint owners should individually submit alternative proposals for the marketing of such capacity to the Commission which will retain jurisdiction to decide how such capacity is ultimately utilized, taking into consideration all relevant factors as well as the views of all the parties involved.[39]

25. Transfer of ownership shares will be subject to Commission approval upon application by the carriers involved. In general, the Commission will be guided by the principle that ownership should be reasonably related to use. Applicants, whether for voluntary or involuntary transfers, will, of course, be required to make the necessary public interest showing, including in the case of involuntary transfers, a showing of reasonable compensation to the transferor. The initial shares, therefore, may be subject to readjustment on the basis of each carrier's use of the system or demonstrated need for additional capacity.

26. As previously noted, we are not now in a position to grant the requisite construction authority for either the earth or space segments of the proposed Navy/Maritime system, yet we are of the opinion that the carriers, other than Comsat, desiring and eligible to participate in this joint venture should be placed in a position where their opinions and views concerning the design and construction of the system will be considered. These carriers, as well as Comsat, as presently contemplated, will be responsible for marketing services provided by this system so their having an input at this time into the decision-making process is of crucial importance to them. In addition to setting out a number of principles upon which the consortium should operate, we have herein modified our previous decisions granting to Comsat a partial waiver for the construction of the space segment to include RCA, WUI and ITT in that partial waiver subject to all participants reaching mutual agreement with respect to the operation of the Navy/Maritime satellite system.

27. It should be noted here that ownership in this developmental system does not grant to any participant any right or authority to participate in any future U.S. or international maritime satellite system. Our action herein is without prejudice to participation by any of the joint owners, in accordance with governmental policy, in international efforts looking toward the establishment of a permanent maritime satellite system. It should also be noted that the Commission, in conjunction with other appropriate government agencies, will take

[37] In this regard, it should be emphasized that in our April 16, 1973, *Order* we determined that the *Authorized User* rationale was not applicable to the shared ownership arrangement envisioned for this system and thus Comsat would not be precluded from the retail commercial maritime market. In light of our decision herein to go ahead with such a joint venture, we see no need to reexamine that determination.

[38] The Commission requests that each joint owner submit, as soon as possible, the types of service that it proposes to provide to commercial maritime users and the proposed tariffs for each service setting forth, among other things, how it intends to recover its share of system investment and expenses.

[39] Each joint owner should also submit its proposals for the ownership, maintenance and operation of the shipboard terminals.

whatever steps are necessary to insure coordination of the proposed system with INTELSAT pursuant to Article XIV of the INTELSAT Agreement and to comply with ITT requirements relating to notification of frequencies and orbital locations. We will expect the consortium to promptly furnish the data necessary for the Commission to discharge its obligations in this respect.

28. Accordingly, IT IS ORDERED, that the applications of RCA, WUI and ITT to participate in the ownership and operation of the Navy/Maritime satellite system are granted to the extent necessary to allow them to participate in the partial waiver granted to Comsat by Commission *Order*, released April 16, 1973 and reinstated by Commission *Order*, released May 15, 1973, and that such Commission Orders are modified to reflect the policies adopted herein and to allow RCA, WUI and ITT to participate in such partial waiver.

29. It is further ordered, that Comsat and the carrier applicants herein authorized to participate in this joint venture, immediately proceed to implement the procedures set forth in paragraphs 20, 21 and 22 and report back to the Commission, as specified in paragraph 21, on the agreement reached or on the progress of negotiations two weeks from the effective date of this *Order*.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-802

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (MARION, ILL.)	Docket No. 19732 RM-1946

REPORT AND ORDER

(Adopted July 26, 1973; Released July 31, 1973)

By THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. The Commission has under consideration its Notice of Proposed Rule Making adopted May 3, 1973 (FCC 73-465, 38 Fed. Reg. 12757), inviting comments on a proposal to substitute Class B Channel 297 for Channel 296A at Marion, Illinois, and substituting Class C Channel 238 for Class C Channel 297 at Poplar Bluff, Missouri. This proceeding was instituted on the basis of a petition filed by 3-D Communications Corporation ("3-D"), licensee of Station WDDD(FM), which operates on Channel 296A. Interested parties were invited to comment on the proposal on or before June 14, 1973, and could reply to such comments on or before June 25, 1973. There were no oppositions to the proposal. Supporting comments were filed by the petitioner.

2. Marion has a population of 11,724 and is the seat of Williamson County (population 49,021).[1] In addition to FM Station WDDD(FM), Marion has a daytime station, WGGH. The only other broadcast station in the county is a Class IV fulltime AM station located at Herrin, Illinois.

3. Petitioner points out that the southern Illinois area is undergoing a rebirth of industrialization and growth and indicates that this growth will cause a tremendous increase in population. 3-D contends that a Class B station is needed to serve the area south of Marion which is extremely hilly and would provide service that does not require special receiving equipment. It states that it would be able to extend the station's coverage to a large area not now served and which is in need of additional radio service. 3-D indicates that because of the increase in population the station would serve (3-D estimates an increase to 250,000 persons from the current 75,000) and would be able to operate on a 24-hour-per-day basis. In order to substitute Channel 297 for Channel 296A presently assigned to Marion, Illinois, and licensed to petitioner, it would be necessary to substitute Channel 238 for Channel 297 at Poplar Bluff, Missouri. The channel at Poplar Bluff is unoccupied. However, a station operating on Channel 238 at Poplar Bluff would have to be sited at least 3 miles northwest of the community to meet the minimum mileage separation requirement from

[1] Population figures cited are from the 1970 U.S. Census.

Station WBHT–FM, Brownsville, Tennessee, operating on Channel 237A. The substitution of Channel 297 for 296A at Marion would not preclude future assignments on any of the adjacent channels.

4. After consideration of the pertinent facts in this case, we are of the view that the subject proposal has merit and that its adoption would serve the public interest. Although the area which would receive a first service is minimal, approximately one-fourth of the gain area (approximately 250 square miles) would receive a second FM service. Since there are communities with Class B assignments in the neighboring area which have less population than Marion, there appear to be no substantial reasons not to substitute a Class B channel for a Class A channel in Marion. Channel 297 cannot be used at any other place in this area. Its assignment to Marion would not preclude future assignments on any of the adjacent channels. A Class C channel is substituted for a Class C channel, which is presently unoccupied at Poplar Bluff, Missouri. Thus, the substitution of a Class B channel for a Class A channel at Marion would result in efficient use of FM frequencies.

5. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended.

6. Accordingly, IT IS ORDERED, That effective September 7, 1973, the Table of Assignments (Section 73.202(b) of the Rules) IS AMENDED with respect to the communities listed as follows:

City:	*Channel No.*
Marion, Ill	297
Poplar Bluff, Mo	233, 238

7. IT IS FURTHER ORDERED, That effective September 7, 1973, and pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license of 3–D Communications Corporation for Station WDDD(FM), Marion, Illinois, IS MODIFIED to specify operation on Channel 297 in lieu of Channel 296A subject to the following conditions:

(a) The licensee shall inform the Commission in writing by no later than September 27, 1973, of its acceptance of this modification.

(b) The licensee shall submit to the Commission by September 7, 1973, all necessary information complying with the applicable technical rules for modification of authorization to cover the operation of Station WDDD(FM) on Channel 297 at Marion, Illinois.

(c) The licensee may continue to operate on Channel 296A under its outstanding authorization until it is ready to operate on the new frequency. Ten days prior to commencing operation on Channel 297, the licensee shall submit the same measurement data normally required in an application for an FM broadcast station license.

(d) The licensee shall not commence operation on Channel 297 until the Commission specifically authorizes it to do so.

8. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-837

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (YAKIMA, WASH.)	Docket No. 19717 RM-1897, -1933

REPORT AND ORDER

(Adopted August 2, 1973; Released August 7, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONERS H. REX LEE AND REID ABSENT.

1. The Commission here considers the Notice of Proposed Rule Making in this docket, adopted March 29, 1973 (FCC 73-354; 38 Fed. Reg. 8754), proposing amendment of the FM Table of Assignments (Section 73.202(b) of the Commission's Rules and Regulations) by assigning Channel 252A to Yakima, Washington. The parties commenting are the petitioners, KUTI Communicators, Inc. (KUTI) and KQOT, Inc. (KQOT), respectively the licensees of daytime-only AM Stations KUTI and KQOT at Yakima, Washington, both of whom seek the assignment of Channel 252A as a fourth channel to Yakima.

2. Yakima, population 45,588 [1] is the county seat and largest city in Yakima County, population 144,971.[2] Yakima has three FM stations (all Class C) and six AM stations (three daytime-only). The Notice raised a number of issues. The first is whether Yakima is entitled to a fourth FM channel assignment under population criteria for assigning FM channels. In this respect, it was appropriately noted that a city of the size of Yakima warrants only two channels while a city of 50,000 to 100,000 population merits up to four channels.[3] However, it was also noted that our population guidelines are not viewed as a strait jacket precluding consideration of special circumstances. Consequently, we stated that the question of making another FM channel assignment to Yakima warranted exploration in the light of an active interest by the petitioners (and possibly others if another channel were assigned there) and in view of the fact that the 1970 Yakima population was only 4,412 below the 50,000 dividing line. Comments were invited about whether a Class A facility could serve the metropolitan area (allegedly with a population of 72,100), the county, and the trade area (261,000 inhabitants), and the question of intermixing classes of channels. We indicated that in order to avoid redundancy the petitioners might wish to file a joint submission. From the tech-

[1] All population information is from the 1970 U.S. Census.
[2] These respectively are a 5.3% increase and 0.1% decrease from the 1960 Census.
[3] See para. 4 of the Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867), and incorporated by reference in para. 25 of the Third Report, Memorandum Opinion and Order (40 F.C.C. 747, 758 (1968)).

nical viewpoint, we agreed that Channel 252A could be assigned to Yakima without affecting any assignment elsewhere and without serious preclusionary effect.

3. We now discuss the comments. KUTI indicates that its interest as a daytime-only station is to provide nighttime service as well. In this respect, it says that our recent Report and Order in Docket No. 18651, 39 F.C.C. 2d 645 (1973), does not permit it to file an application for a nighttime AM facility, and, thus, the most feasible method for achieving its objective of providing nighttime service is by the assignment of an additional FM channel which it proposes to apply for. In other respects, KUTI incorporates by reference factual material submitted by it and KQOT in support of the petitions. We need not here repeat this for what was deemed relevant was set forth in the Notice. KUTI affirms its interest in filing an application for a station if a channel is assigned. As to the question of the ability of a Class A station to serve a substantial portion of the population in and around Yakima, KUTI says that the population is concentrated in a small geographic area in the Yakima River Valley; while Yakima is located in the mountains of south-central Washington, the city is in the valley of the Yakima River which is bounded by steep mountains to the northeast and southwest and we are told that large unpopulated areas owned by the Government lie to the north and east and a sparsely populated Indian reservation is located to the south and west. In the circumstances, KUTI states that from a transmitter site at one of several locations on nearby mountains (where the existing FM stations operate) adequate service to a substantial portion of the population in and around Yakima can be rendered. In this respect, it defers to the engineering finding submitted by KQOT.

4. KQOT's comments are of principal interest with respect to the engineering study dealing with the type of service that a Class A station could provide to Yakima and surrounding area. From a transmitter site tentatively selected for its application, KQOT shows that a community-grade signal could be provided to 171 square miles encompassing the city of Yakima and its urban area with a total population of 74,900 people (51% of the population in the county), while the 1 mV/m contour would cover 620 square miles with a population of 110,871 (76% of the county).[4] No showing was made about the trade area. As concerns the question of intermixture, KQOT refers to numerous actions by the Commission where such action has been permitted.

5. As already noted, the basic issues in this proceeding concern the population criteria and intermixture. As to the former, we have said that they are "a guide and not an immutable standard" (*Fresno*, 38 F.C.C. 2d 525, 526 (1972)). Here, as in that instance, there is reason for deviating from the criteria because of the availability of an FM channel for assignment to Yakima, and because of demand for the channel which is evidenced by what in effect is a joint petition by two daytime-only stations seeking to bring nighttime service. Moreover, it appears that such service would be brought to a substantial popula-

[4] Other data filed with KQOT's comments consist of letters evidencing an interest in having its public affairs programming broadcast during evening hours. We do not detail this information here, inasmuch as it seems to be more appropriate as concerns an application for construction permit should a channel be assigned to the community.

tion in and around Yakima. The record shows that because of the peculiar geographical location of Yakima and Yakima County and the high concentration of population in the river valley, a Class A facility from one of the nearby mountain peaks could provide a community-grade service to about 75,000 people and at least 1 mV/m service to approximately three-fourths of the population in Yakima County.[5] As to the policy against intermixture of the classes of FM channels to a community, KQOT points to many instances of deviation, and, indeed, we have deviated, for example, when there is a demand and a showing has been made that a Class A channel could compete with Class C channels (or at least, a showing has been made that someone is willing to attempt such action) when no further Class C channel may be assigned to a community. See and compare *Tallahassee* (FCC 73-670, —— F.C.C. 2d —— (1973)). See also *Oak Ridge*, 32 F.C.C. 2d 937, 944 (1972); and *Parkersburg*, 37 F.C.C. 2d 54, 58 (1972), where we indicated that we adhere to intermixture to the extent possible but that to continue to do so with the FM assignments becoming scarce in some areas would be a vain effort aimed at equality and parity of service inconsistent with more important public interest, convenience, and necessity considerations under the Communications Act.

6. In the circumstances, we find that the public interest, convenience, and necessity will be served by assigning Channel 252A to Yakima, Washington, considering all relevant policy considerations. From the point of view of population criteria, another assignment would satisfy the demand and need for additional nighttime service to a substantial population because of the geographical characteristics. As to intermixture, our concern was both as to policy and whether a Class A facility could provide Yakima and its surrounding population with requisite service. As to the latter, we are satisfied that because of the population concentration a station on Class A channel could provide adequate service. As to intermixture, we are guided by the considerations mentioned at the end of the last paragraph.

7. Authority for this action is found in Sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended.

8. Accordingly, IT IS ORDERED, that the FM Table of Assignments (Section 73.202(b) of the Commission's Rules and Regulations) IS AMENDED effective September 14, 1973, as concerns Yakima, Washington, as follows:

City:	*Channel No.*
Yakima, Wash	233, 252A, 281, 297

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[5] See Section 73.315.

F.C.C. 73-841

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS, (FLINT, MICH.)	Docket No. 19688 RM-1924

REPORT AND ORDER

(Adopted August 2, 1973; Released August 7, 1973)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT.

1. On February 14, 1973, the Commission adopted a Notice of Proposed Rule Making (FCC 73-176; 38 Fed. Reg. 5193) looking towards the assignment of FM Channel 224A to Flint, Michigan. The Notice stemmed from a petition filed by Flint Family Radio, Inc. (Family) on February 16, 1972. Interested parties were requested to submit comments concerning the proposed change in the Table of Assignments on or before March 28, 1973, and to file reply comments on or before April 6, 1973. Comments in support of the proposal were received from the petitioner and from Sherwood Broadcasting, Inc. (Sherwood), a newly formed corporation that wishes to enter the broadcast field. No opposing statements were filed.

2. Flint, with a population of 193,317, is located in Genesee County (population 444,341).[1] It has been assigned three FM channels (two Class B's and one Class A) and all are currently occupied.[2] There are also six standard broadcast stations in Flint—four full-time and two daytime-only. One of the daytime-only AM stations operates in conjunction with an FM station operating on the Class A channel. The broadcast facilities in Flint are the only ones located in Genesee County. Both Family and Sherwood state in their supporting comments that if an additional FM channel is assigned to Flint, each will apply for the channel and, if granted a construction permit, build promptly.

3. As evidence that Flint can support an additional FM service, petitioner indicates that the average annual rate of growth of personal income from 1959 through 1968 was 7.73% and that retail sales for Genesee County totaled over $728 million. Also, while primarily an automobile manufacturing city with approximately 342 manufacturing concerns, petitioner notes that Flint's retail area has a radius of 25 miles with a population of over 500,000. The information submitted by the petitioner is sufficient to enable us to conclude that Flint is a

[1] Population figures are from the 1970 U.S. Census.
[2] One of the Class B channels is occupied by noncommercial educational Station WFBE, licensed to the Flint Board of Education.

prosperous and growing community, able to support an additional FM service.

4. According to the population criteria for assignment of FM channels, communities with populations ranging from 100,000 to 250,000 are normally assigned four to six channels.[3] However, Flint, with a population of nearly 200,000, presently has only three channels, one of which is used by a noncommercial educational station. It therefore appears that there is a need for the additional channel requested for the community. Although the assignment of Channel 224A to Flint intermixes classes of channels, we note the channels in Flint are already intermixed; moreover, demand for a Class A channel has been evidenced by two parties both of whom have indicated an interest in using the channel and both of whom have apparently made the business judgment that a Class A facility would be viable in Flint.

5. Channel 224A can be assigned to Flint without violating our mileage separation requirements and without making any other changes in the Table of Assignments. The preclusion study submitted by petitioner discloses that if Channel 224A is assigned to Flint, future assignments on Channels 223 and 224A would be prohibited. However, the preclusion on Channel 223 occurs in a limited region where the channel cannot be used efficiently. On Channel 224A the zone of preclusion is limited to the Flint area where an assignment could be made to the adjoining community of Mount Morris, Michigan (population 3,778). The proximity of Mount Morris to Flint signifies that Channel 224A would be available to applicants of Mount Morris under § 73.203(b) of the Commission's Rules. Thus, the assignment of Channel 224A to Flint would result in a more efficient administration of the FM frequencies because it cannot be used at any other community in this area of the state.

6. Since Flint is within 250 miles of the U.S.-Canadian border, concurrence has been obtained from the Canadian Government for the assignment of Channel 224A to that community.

7. In view of the foregoing, we are of the opinion that the additional assignment would serve the public interest and should be made.

8. Authority for the amendment adopted herein is found in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

9. Accordingly, IT IS ORDERED, That, effective September 14, 1973, the Table of Assignments contained in Section 73.202(b) of the Commission's Rules and Regulations IS AMENDED, insofar as the community named below is concerned, to read as follows:

City:	*Channel No.*
Flint, Mich	224A, 236, 288A, 300

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[3] See para. 4 of the Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867), and incorporated by reference in para. 25 of the Third Report, Memorandum Opinion and Order (40 F.C.C. 747, 758 (1968)).

F.C.C. 73-842

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (SHOREWOOD, OTTAWA, LOCKPORT, AND CREST HILL, ILL.)	Docket No. 19550 RM-1859, -2049

REPORT AND ORDER AND ORDER TO SHOW CAUSE

(Adopted August 2, 1973; Released August 8, 1973)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND REID ABSENT.

1. On July 19, 1972, the Commission adopted a Notice of Proposed Rule Making in this proceeding (FCC 72-638, 37 Fed. Reg. 15171) in response to a petition of Joliet Radio Corporation, licensee of standard broadcast Station WJRC, Joliet, Illinois. The Notice proposed the reassignment of Channel 252A from Ottawa, Illinois, to Shorewood, Illinois, and the replacement of Channel 252A at Ottawa with Channel 237A.

2. Interested parties, after extensions of time were granted, were afforded an opportunity to file comments on or before September 11, 1972, and (taking into account an intervening holiday) to reply to such comments on or before October 10, 1972. Timely comments and/or reply comments were filed by Joliet Radio Corporation (Joliet Radio); Van Schoick Enterprises, Inc. (Van Schoick Enterprises);[1] and WFMT, Inc. (WFMT). Mr. Joseph Oswald filed three separate reply comments. One of these was timely and proper and has been given consideration in arriving at our decision herein. The other two were reply comments directed at reply comments of another party.[2] Section 1.415 of the Rules does not contemplate the filing of such pleadings unless specifically requested or authorized by the Commission, which they were not in the instant case. Because of this and because the contents of these two pleadings are not essential to our decision, they are not accepted for filing and are given no consideration herein. Additionally, Mr. Oswald filed a petition for rule making (RM-2049) which contained two counterproposals. This petition, filed prior to the date for filing initial comments in this proceeding, was considered as a comment (pursuant to our cut-off procedures announced in the Notice).

[1] Mr. Wayne J. Hess, Receiver, WOLI Broadcasting Corp. (operating on Channel 252A at Ottawa, Illinois), participated in the early phase of this proceeding by filing an opposition to the petition for rule making. On December 22, 1971, the Commission granted BALH-1587, assigning the license of WOLI from Mr. Hess to Van Schoick Enterprises. Among other things, the comments filed by Van Schoick Enterprises adopt and incorporate by reference the aforesaid opposition filed by Mr. Hess.

[2] These two pleadings are "Reply to: Further Reply Comments of the Joliet Radio Corporation—Oct. 4, 1972" and "Reply to Opposition Comments to Oswald Counterproposals."

104-008—73——4

3. Although inviting comments on the proposed assignment of Channel 252A to Shorewood, the Notice also stated that it would be in the public interest to consider the needs and importance of other communities larger in size to which the channel might be assigned if deleted from Ottawa and not assigned to Shorewood. Examples of some such communities were listed and we indicated that we would entertain showings by interested parties as to the possible use of Channel 252A in such communities on the condition that any such counterproposals must be accompanied by an offer to reimburse the licensee of WOLI for reasonable expenses incurred for shifting its operation from Channel 252A to 237A at Ottawa, Illinois.

4. The only filing which did so was that of Mr. Oswald which sets out alternative counterproposals (RM–2049), i.e., the assignment of Channel 252A to either Lockport or Crest Hill, Illinois, rather than Shorewood, Illinois. With regard to the Lockport proposal, we observe that Channel 252A cannot meet our minimum mileage separation requirements to Class B Channels 250 and 254 assigned to Chicago, Illinois, and at the same time put the minimum signal required over the entire community of Lockport, i.e., a field strength of 70 dB above 1 uV/m. Approximately 4% of the area of Lockport would not receive the required signal strength if our minimum mileage requirements are adhered to. In view of this fact, our normally strict observance of our engineering rules, and the possibility of using the channel in full compliance with our rules at either Shorewood or Crest Hill, Illinois, we find that it would not be in the public interest to grant the requested waiver of our rules and attempt to make the assignment of Channel 252A to Lockport, Illinois. Hence, we now have pending before us in this proceeding the possible assignment of Channel 252A to Shorewood or Crest Hill, Illinois, and the replacement of Channel 252A at Ottawa, Illinois, with Channel 237A.

5. In view of the pleadings, we are required to make one further preliminary judgment. WFMT, operating on Class B FM Channel 254 in Chicago, Illinois, points out that it has a significant audience in the Joliet area of Illinois and indicates that it would be in the public interest to permit that audience to continue its enjoyment of WFMT. It further points out that a station at either Shorewood or Crest Hill operating on Channel 252A would impair WFMT's signal in and around those communities. We acknowledge this probability while observing that WFMT, as any other station in its power class (Class B), is only entitled to the standard protection of 40 miles separation between it and the proposed service on Channel 252A. In connection with the WFMT filing, we received approximately 100 letters from members of the public who reside in the Shorewood-Joliet-Crest Hill area of Illinois which strongly advocate the type of programming (apparently classical music and cultural) available on WFMT and express a concern about the probable loss of access to it by the interference which will be created to the WFMT signal in the Joliet area by a new service at either Shorewood or Crest Hill on Channel 252A. In this proceeding we bring these expressions of community interest and taste to the attention of any applicant for the use of Channel 252A in the Shorewood-Joliet-Crest Hill area of Illinois.

6. Will County, Illinois (population 249,498) [3] contains the two communities of Shorewood (population 1,749) [4] and Crest Hill (population 7,460). Neither community has either an FM assignment or a standard broadcast station. Shorewood is immediately west of Joliet while Crest Hill abuts Joliet on the north.

7. With regard to Shorewood, Joliet Radio states:

> Shorewood is an incorporated village, with a Village Council form of government. The village government provides police service within its boundaries, performs construction and maintenance of streets within the village, and performs other government functions, such as zoning. The village government is faced with policy decisions on zoning applications, demands for street improvements and for police protection and other municipal matters. The presence of these issues naturally gives rise to a need for a *local* outlet for self-expression by Shorewood residents on these matters. In addition to the problems of the village government, there are other local activities which also create a need for local self-expression.
>
> Shorewood has one public school. It has a fire department (located in Shorewood) which provides protection for Shorewood and adjoining parts of Troy Township. Shorewood also has the usual voluntary organizations created by its residents. It has churches (a Methodist Church and a Church of God), the Shorewood Lions Club, a Boy Scout Troop, and the Shorewood Homeowners Association.
>
> Shorewood also has its own commercial life. It is not a mere bedroom community for workers whose jobs are elsewhere. For instance, it has two major liquor wholesalers. One of them, United Liquor & Beverage Company, is a wholesale beer distributor. It has two motels—a Holiday Inn and a Howard Johnson's Motel. Two major industrial parks are now under development in Shorewood. Immediately outside of Shorewood, Mobile Oil Company is building a multimillion dollar refinery. In the same area are located the new stockyards which opened recently. Since the famed Chicago Stockyards closed, this facility now serves the entire midwest. In Shorewood itself there is a new shopping area, recently opened, which provides a wide range of retail services.

Mr. Oswald questions the veracity of a number of the above statements and in sum agrees with Van Schoick Enterprises that Shorewood is in essence too small to support an independent station and is in reality but a "bedroom" community for Joliet, Illinois. Mr. Oswald suggests that because of the smallness of Shorewood and its proximity to Joliet any FM station assigned to it and licensed to Joliet Radio would necessarily be simulcasting with WJRC much of the time.

8. In supporting the proposed assignment of Channel 252A to Shorewood, Joliet Radio shows that there are other channels available to most of the communities listed in the Notice, and submits that a station at Shorewood would provide a first and second FM service to substantial areas.

9. Concerning Crest Hill, Mr. Oswald provides the following information. Its 1970 population of 7,460 represents a 25% increase over its 1960 population which was 5,886. Its retail sales in 1967 (latest official figures) were $14,700,000. It is a community with its own government (mayor, city council) and with more than 100 commercial establishments. It shares the same school system with nearby Lockport, it has resisted annexation by Joliet, and it strives to maintain its own identity. (Hence, he avers, its problems, needs, and interests must be dealt with separate from those of adjoining Joliet.) It has a strategic physical location as to expressways and canal commerce and has a favorable

[3] All population figures cited are from the 1970 U.S. Census unless otherwise specified.
[4] A special 1972 U.S. Census indicates that the population of Shorewood as of 1972 is 2,809.

growth pattern. It not only is without local AM, FM, or TV stations, but it has no regular daily newspaper. Mr. Oswald states that if the channel is assigned to Crest Hill he will promptly file an application for its use and that he is willing to reimburse WOLI for reasonable expenses incurred for shifting its operation from Channel 252A to 237A.

10. We have carefully considered the record in this proceeding. Joliet Radio and Mr. Oswald have each attempted to show that there is a need for a first local radio service in Shorewood and Crest Hill, the respective communities to which they seek assignment of the channel. Each has tried to show that the community it proposes is capable of supporting a local FM station. Each adverts to a favorable growth pattern. Each has stated that the community it proposes has no AM, FM, or TV station, and no daily newspaper. Each makes statements to show that its chosen community, although an immediate neighbor of Joliet, seeks to preserve its separate identity as a community.[5]

11. We believe that Mr. Oswald has adequately demonstrated a need for a channel at Crest Hill (see para. 9 *supra*) and that the public interest would be served by the assignment of Channel 252A to that community and the substitution of Channel 237A for 252A at Ottawa. Although it appears from the record that Crest Hill could support a viable local FM service, a question has been raised as to whether Shorewood could do so or whether it is a mere bedroom community of Joliet. We do not find it necessary to decide this question because even if decided favorably to Shorewood, the proposed assignment to that community fails on other grounds. While there may be a need for an FM channel at Shorewood, there has been no showing that the need there is greater than the need at Crest Hill. Both communities are without local AM, FM, or TV stations; both have no daily newspaper; both are adjacent to Joliet and presumably receive broadcast services from that community; both apparently have local governments and local problems; and both have shown favorable growth patterns. As to the latter point, although the Shorewood population increased about 250% from 1960 to 1970 while that of Crest Hill increased only about 25%, as to actual population Shorewood increased by 1,250 persons and Crest Hill by 1,574 (Shorewood: 1960 pop. of 499 and 1970 pop. of 1,749; Crest Hill: 1960 pop. of 5,886 and 1970 pop. of 7,460).[6] Therefore, at best it would appear that the need for a channel at Shorewood is equal to that at Crest Hill if one does not consider the population sizes of the two communities. However, in view of the fact that the population of Crest Hill is substantially larger than that of Shorewood, it appears that the mandate of Section 307(b) of the Communications Act for a fair, efficient, and equi-

[5] In addition, Joliet Radio avers that if Channel 252A is assigned to Shorewood it would provide a first and second FM service to substantial areas. However, its coverage showing is based on existing facilities. If it were made on the basis of the *Roanoke Rapids-Goldsboro* criteria (9 F.C.C. 2d 672 (1971)), a Shorewood station would not provide a first FM service to any portion of the service area, and would provide a second FM service to a very limited area.

[6] Joliet Radio submits the results of a special census taken as of June 19, 1972, showing the population of Shorewood at that time to be 2,809. In the absence of such a census for Crest Hill, we of course cannot compare the populations of the two communities as of that date; however, there is no reason to believe that the population of Crest Hill has not continued to increase since the 1970 Census was taken.

table distribution of radio service requires that the channel be assigned to Crest Hill if such an assignment would otherwise be in the public interest.

12. We note that Mr. Oswald has indicated his willingness, if ultimately granted a license for Channel 252A at Crest Hill, to reimburse the licensee of Station WOLI for reasonable costs for changing its operation from Channel 252A to 237A. We also note that this representation is made in the light of the costs set out by Van Schoick Enterprises with regard to such a channel change.

13. Authority for the actions taken herein is contained in Sections 4(i), 303, 307(b) and 316 of the Communications Act of 1934, as amended.

14. Accordingly, IT IS ORDERED, that effective September 14, 1973, the Table of Assignments in Section 73.202(b) of the Commission's Rules IS AMENDED, insofar as the cities listed below are concerned, to read as follows:

City:	*Channel No.*
Crest Hill, Ill	252A
Ottawa, Ill	237A

15. IT IS FURTHER ORDERED, that Van Schoick Enterprises, Inc., licensee of WOLI at Ottawa, Illinois, SHALL SHOW CAUSE under the provisions of Section 316(a) of the Communications Act of 1934, as amended, why its outstanding license for the operation of WOLI on Channel 252A should not be modified to specify operation on Channel 237A and that it do so not later than September 14, 1973.

16. After the receipt of Van Schoick Enterprises, Inc.'s response to the above show cause order, it will be evaluated. In the event that it is determined to be in the public interest to modify the license of Van Shoick Enterprises for WOLI to specify operation on Channel 237A in lieu of Channel 252A, we shall issue appropriate orders including an order which will require that any successful applicant for the use of Channel 252A at Crest Hill, Illinois, reimburse the licensee of WOLI at Ottawa, Illinois, for all reasonable costs it incurs for shifting its operating frequency from Channel 252A to Channel 237A.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-876

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re the Applications of	
FWS RADIO, INC.	File No. 2201-C2-P-69
PAGE A FONE CORP.	File No. 3399-C2-P-69
MORRISON RADIO RELAY CORP.	File No. 3039-C2-P-69
GENERAL TELEPHONE CO. OF THE SOUTHWEST For Construction Permit To Establish New Facilities in the Domestic Public Land Mobile Radio Service in the Dallas-Fort Worth, Texas, Area	File Nos. 4572/4578-C2-P-69

MEMORANDUM OPINION AND ORDER

(Adopted August 21, 1973; Released August 22, 1973)

BY THE COMMISSION:

1. The Commission has before it for consideration a Petition for Reconsideration of its decision on the above-captioned applications (FCC 73-436, released April 30, 1973, 40 FCC 2d 680) filed by RAM Broadcasting of Texas, Inc. (RAM) on May 24, 1973. RAM also filed a Request for Stay on the same date, and these petitions have been opposed by Morrison Radio Relay Corp. (Morrison), FWS Radio Inc. (FWS) and Page A Fone Corp. (Page).

2. In our decision we granted all the captioned applications [1] and relaxed our "head start" doctrine. RAM is the licensee of Station KKG412 in the Domestic Public Land Mobile Radio Service (DPLMRS) at Dallas, Texas. It is also an applicant for two low-band frequencies (43.22 and 43.58 MHz). Answering Unlimited, Inc. (Answering) and Morrison have applications pending for the frequency 43.22 MHz, while Airsignal International, Inc. (Airsignal), and Forester Radio Telephone Inc. (Forester) have applications for 43.58 MHz. In addition, Petitions to Deny had been filed against the RAM applications by Page and Central Radio Dispatch (Central). FWS is a corporation with 50% of the stock owned by George A. Smith, Jr., who controls Central, and the other 50% owned by Pearl and Gene Forester, who also own 48% of the stock of Forester Radio Telephone, Inc.

3. RAM argues that it is Common Carrier Bureau policy not to grant applications of persons who have filed Petitions to Deny against

[1] All these applications were for paging construction permits on the so called "guard-band" frequencies, see the Commission's Report & Order in Docket 16778, 12 FCC 2d 841 (1968), *reconsideration denied* 14 FCC 2d 269 (1968), Aff'd sub. nom. *Radio Relay Corporation* v. *F.C.C.* 409 F. 2d 322 (2d Cir. 1969).

other applicants. This policy, it says, was violated by granting the applications of Page and FWS. It also objects to the grant to Morrison, since Morrison had a mutually exclusive application pending. However, RAM does not request reconsideration of the grant to General Telephone Co., of the Southwest (General). RAM sees itself deprived of due process, since its competitors have been granted channels for paging, while its paging applications are still pending. It believes that the competitors will be inclined to delay resolution of the low band proceeding, even though it doubts that they can justify grant of another paging channel.

4. Morrison, in its opposition, argues that RAM has no standing to request reconsideration, since it has not shown why it could not have participated in the proceeding earlier. It also says that it did not file any Petition to Deny against RAM and so no "policy" should retard its construction permit. It further claims that RAM is complaining of delay, but is simply trying to delay operation by its competitors. Finally, it says that RAM has misstated Bureau policy, since the Bureau has treated "guard-band", low band and UHF frequencies separately. FWS and Page filed a joint opposition, wherein they argued that the Petitions to Deny mentioned by RAM were irrelevant, since the RAM applications were involved with mutually exclusive applications, and that the issue was also moot, since the two parties dismissed their petitions (on June 6, 1973). The opposition also said that there is no Bureau policy to delay action on guard band applications until low band applications can be disposed of. Finally, it points out that RAM has 6 two way channels in the Dallas area, and was serving 558 pagers as of Dec. 31, 1971 (no more recent information was available), and these channels had a capacity of over 5000 pagers in addition to two-way service.

5. RAM replied to the oppositions, and defended its standing, by saying that it could not have participated earlier, since it had not been licensed at the time when Petitions to Deny could have been filed. It then reasserted its argument that the permittees here had delayed grant of its application and should not be rewarded with construction permits. It argued that even if the Petitions to Deny and mutually exclusive applications of these parties were not the only cause for preventing a grant of RAM's application, they were still a cause of the delay. It says that there is no logical difference between low band and guard band frequencies, and so that distinction relied on by the grantees is meaningless. It considers that dismissal of the Petitions to Deny, by Page and Central, begs the question, since they were only dismissed at the petitioners convenience, after delaying RAM. Finally, RAM argues the capacity of the various carriers in the Dallas-Fort Worth area and concludes that it is at a disadvantage.

6. The Request for Stay and the oppositions thereto may be summarized briefly as arguments on why and how the criteria of *Virginia Petroleum Jobbers Association* v. *F.C.C.*, 104 U.S. App. D.C. 106, 259 F2d 921 (CADC 1958) have, or have not, been met. In view of our decision on reconsideration, we do not think the matter needs to be discussed further.

7. The "policy" RAM alludes to, appears to be only an application of *Ashbacker Radio Corporation* v. *F.C.C.*, 326 U.S. 327 (1945), to

certain situations where the Bureau does not have delegated authority to act. That is, if one applicant in a given market, claims in a Petition to Deny that another person's application should be denied, on the grounds that there is not sufficient need for both applications to be granted, the Bureau has taken the position that the petitioner's application should not be granted until the Commission can act on the Petition, and either designate both applications for hearing, or dismiss the Petition and grant both applications. The Bureau has limited the policy to situations involving the same market, the same type service, etc. Obviously, this is not a final determination that the applications in fact are mutually exclusive, since the Bureau does not have delegated authority to rule on allegations in Petitions to Deny. It is merely a preliminary decision that at least one of the applicants thinks there is mutual exclusivity and should not receive a construction permit until the Commission can rule on the allegations. If the Petition is dismissed, the question will normally vanish, unless such cogent arguments are made that the Commission should act on them. Here, both RAM and the permittees were seeking paging channels, in the same market, and Petitions to Deny the RAM application were filed by one of the permittees and by one of the principals of another. However, in present circumstances, we do not think that the reconsideration is appropriate. The Petitions have been dismissed, and our examination of them shows that the objections were of the sort that an existing carrier may legitimately argue or waive, as it thinks best. The fact they were dismissed after a grant rather than prior to one appears of much less importance than the dismissals themselves. For these reasons we do not think that RAM has been harmed by an inadvertent departure from policy by the Bureau and see no reason to reconsider our decision on this basis.

8. Regarding Morrison and Forrester, RAM believes that their low-band applications are delaying RAM, and they should not be allowed to get a "headstart" in paging. We note that RAM faces other mutually exclusive applications as well as those of Morrison and Forrester, and point out that filing for more than one frequency at a time is permissible, otherwise RAM itself could not have filed for low-band channels. Whether an applicant or permittee can show justification for grant of more than one frequency is another question, and one we will consider when we take action on the low-band applications in the Dallas area. This brings us to RAM's other argument. As we understand it, RAM wants us not merely to reintroduce the "headstart" doctrine formerly applied to guard band frequencies, but to extend the policy, so that no paging applications can be granted until all are disposed of. RAM does not claim that any Commission decisions or policies support this position, but argues that there is no logical difference between low band and guard band paging, and apparently concludes that what formerly was considered good for guard band applications is good everywhere. We recognize that such a policy might benefit RAM, but see no corresponding advantage to the public. In our decision on these applications we found that the "headstart" doctrine did not benefit the public and wasted spectrum, since frequencies allocated several years ago were still not in use at a time of increasing spectrum shortage. For the same reasons we are not inclined to restore

that doctrine, much less extend it. We think it is time that these frequencies be put in use to meet the needs which even RAM admits exist in the Dallas-Fort Worth area. As to the "logic" of the distinctive treatment formerly given to guard band applications, we think it can be found in the history of those frequencies, (see the cases cited on our decision released April 30, 1973, as well as the Public Notice of March 14, 1969 (FCC 69–235)).

9. A final word may be in order. It is well known that the DPLMRS is a competitive service and that licensees resent seeing competitors gain any advantage. This may be understandable, but it has led to a backlog of Petitions to Deny, complaints, protests, Petitions for Reconsideration, etc., to the point that too many applications are delayed interminably. This has become a serious concern to the Commission and rule making is being considered in an attempt to accelerate our processes. However, we do not intend to hold action on all pending applications until we can conduct a rule making proceeding. Frequencies have been allocated to the DPLMRS only because we have found that their use will be in the public interest, and we do not think that we should delay applications to operate on those frequencies any longer than we have to, or that we should reconsider grants unless very strong reasons are shown. In the present case, we cannot see any valid public interest reason for reconsidering our action. We realize that the permittees will get something of a "headstart" on RAM in paging, just as RAM, on its two-way channels, has a "headstart" on those who, in the future, may obtain two-way channels, in Dallas. We do not see that as any reason to halt all improvements in public service until everyone is equal. The Commission's role is not that of a starter in a race, whose chief duty is to see that all begin together, but to foster an adequate public service.

10. According, IT IS ORDERED, That the Petition for Reconsideration and Request for Stay, filed by RAM Broadcasting of Texas, Inc., on May 24, 1973, are denied.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73–833

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Assignment of LICENSE OF STATION WROR–FM FROM RKO GENERAL, INC. TO HEFTEL BROADCASTING-BOSTON, INC.	BALH–1740 and BASCA–528

AUGUST 2, 1973.

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

1. On August 2, 1973, the Federal Communications Commission granted its consent to the assignment of the license of Station WROR–FM, Boston, Mass. from RKO General, Inc. to Heftel Broadcasting-Boston, Inc. (BALH–1740 and BASCA–528).

2. It is hereby certified that the above assignment of license was necessary or appropriate to effectuate the new policy adopted by the Commission with respect to ownership and control of broadcast facilities (First Report and Order in Docket No. 18110, FCC 70–310).

3. This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof I have hereunto set my hand and seal this 2nd day of August, 1973.

Commissioner Johnson dissenting; Commissioners H. Rex Lee and Reid absent.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73D–40

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of HORNE INDUSTRIES, INC., SEARCY, ARK.	Docket No. 18989 File No. BPH–6810
TELLUM BROADCASTING CO. OF SEARCY, INC., SEARCY, ARK. For Construction Permit	Docket No. 18990 File No. BPH–6953

APPEARANCES

Euegene T. Smith, on behalf of Horne Industries, Inc.; *William Howard Payne* and *Charles E. Robbins*, on behalf of Tellum Broadcasting Company of Searcy, Inc.; *Katherine Savers McGovern* and *Theodore D. Kramer*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JAMES F. TIERNEY

(Issued June 28, 1973; Effective August 29, 1973 pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. By Order (FCC 70–975), released September 16, 1970, the Commission designated for consolidated hearing the instant applications upon the following issues:

(1) To determine whether Tellum Broadcasting has available the additional $33,402 required for construction and first-year operation of its proposed station without reliance on revenues to thus demonstrate its financial qualifications.

(2) To determine the efforts made by Horne Industries to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(3) To determine the efforts made by Tellum Broadcasting to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(4) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(5) To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications for construction permit should be granted.

2. In an Initial Decision (FCC 73D–3), released January 26, 1973, the Presiding Judge denied the application of Tellum Broadcasting

Company of Searcy, Inc. (hereinafter "Tellum"). A Joint Petition for Approval of Agreement under Section 1.525 of the Commission's Rules was denied and the Agreement subsumed thereunder was disapproved, and Horne's application remained in hearing status for subsequent consideration. On March 26, 1973, counsel for Tellum, upon instructions from its client, advised the Commission, and all parties, that no appeal would be taken from the aforementioned Initial Decision. On June 14, 1973, a Notice (FCC 03618) was released by the Commission indicating that the Initial Decision of January 26, 1973, became effective on April 27, 1973.

3. On April 19, 1973, following Motion of Horne, a further hearing conference was convened in Washington, D.C. for the purpose of hearing evidence relating to Horne's designated Issue No. 2, *supra*. On that date, Horne offered, and the same was received in evidence, documents identified as Horne's Exhibit No. 5, "Horne's Ascertainment of Community Needs and Interests, and the means by which Horne proposes to meet the Community's Needs and Interests", and Horne's Exhibit No. 8, page 2, "Affidavit of Verification to Horne's Exhibit No. 3, 4, 5 and 6".[1] The evidence so received was without objection, and the record was closed on the same date. Proposed Findings of Fact and Conclusions of Law, following an extension of time request by Horne, were to be filed on or before June 20, 1973 (FCC 73M–606). The Broadcast Bureau, at the hearing conference of April 19, 1973, indicated that it would not file Proposed Findings of Fact and Conclusions of Law.

4. A principal object of the directed submission of Proposed Findings and Conclusions by the parties is the expeditious resolution of the issues and where faithful to and substantially reflective of the record evidenced, they effectively aid and lighten the duties of the trier-of-fact. Here the Proposed Findings and Conclusions of Horne do just that and save for minor preferences of language, principally editorial, they are adopted in every respect.

5. For the reasons set forth hereafter, this, as an Initial Decision, SHALL GRANT the application of Horne Industries, Inc.

Findings of Fact

6. Tellum's notification that no appeal would be taken to the Initial Decision of January 26, 1973, and the Commission's Notice of June 14, 1973, providing an effective date for the Initial Decision, leaves one issue to be decided in the proceeding. Horne's Issue No. 2, *supra*, seeks to determine the efforts made by Horne to ascertain the community needs and interests of the area to be served by its proposed FM facility, and the means by which Horne proposes to meet the needs and interests of Searcy, Arkansas. Horne's ascertainment showing, filed with its application within the 90 day period of time following release of a Commission Report and Order (FCC 71–176),[2] reveals that the community of Searcy, Arkansas, the county seat of White County[3] has,

[1] Horne's Exhibits 3, 4 and 6 were not offered into evidence.
[2] Primer on Ascertainment of Community Problems by Broadcast Applicants (hereinafter "Primer") 21 RR 2d 1507, at page 1539, para. 79, released February 23, 1971.
[3] The facts and statistics utilized relate to both Searcy, Arkansas, and White County, although the major portion of same do relate to the community of identification.

within the past two decades, been transformed from a predominantly agricultural community into a balanced business and industrial community. Although agriculture is still a major factor in the economy of the area, industrialization has become increasingly important. Diversification of agriculture, general business and the industrial economy has played a dominant role in maintaining a stable economy. Many factory workers who are employed in Searcy and the smaller towns of Beebe, Bald Knob and Judsonia commute to their jobs at the factories while maintaining their homes in the rural areas, supplementing their factory incomes with small herds of cattle, poultry and truck crops.

7. The 1970 Federal Census for White County, Arkansas, lists the county population as 39,253, up 19.9 percent from the 1960 figures. The City of Searcy (principal city to be served and the location of the proposed FM Broadcast facility), had a 1970 population of 9,032 in the city proper, indicating a growth of 24 percent from 1960 census figures. Figures released by the Census Bureau and the smaller communities program of the Arkansas Employment Security Division, indicate that of the 39,253 persons living in White County, 37,815 are White (96.3% of the total), 1,365 persons are Negroes and 73 persons of other races.

8. The sources above also enumerate 12,658 households in White County, 13,785 housing units (9,032 of them occupied by owners) 3,626 occupied by tenants and 1,127 vacant (used primarily on a seasonal basis).

9. White County's 1970 population is classified as 30% urban and 70% rural, however it can be noted that those living in rural areas are classified as rural, but often one or more members of the family have employment in urban centers.

10. The industrial plants in the county include 8 major manufacturing and processing plants in Searcy ranging from food processing (Birdseye Division of General Foods) to bronze plaques, rubber rollers, office machines, steel fabrication, laundry equipment and stainless steel products. In addition, at least 3 smaller manufacturing facilities are located in smaller towns in the County. Only two of the factories have unionized labor.

11. Agriculture includes cattle, soybeans, hay, strawberries, cotton, eggs, broilers and fryers and truck crops such as okra, spinach, mustard, tomatoes. The largest crops would be cattle, soybeans, and poultry.

12. The county is in reality one large community of the whole, with Searcy, the county seat, as the major trade center and major center of governmental activity. The county operates on the County Judge, Quorum Court type of Government, and all incorporated cities including Searcy have the Mayor-Council form of Government.

13. There are 12 public school districts within the County, along with 2 private schools. In higher education, Harding College in Searcy is a privately supported 4 year Christian College with an enrollment of 2,000. Also a Branch of Arkansas State University is located at Beebe, (18 miles from Searcy) and has an enrollment of 700. All schools in the county are totally integrated and there have

been absolutely no major racial problems in the county relative to school integration or otherwise.

14. Horne's application was first filed with the Commission on August 18, 1969. In endeavoring to comply with the Commission's Notice of Inquiry (20 FCC 2d 880, adopted December 19, 1969) as to ascertainment activities, Horne, on December 30, 1969, filed with the Commission an amendment to its application containing, among other things, a new community needs showing. The latter ascertainment survey, and Horne's most recent survey filed as a matter of right following the Commission's adoption of its Primer (FCC 71-176, released February 23, 1971), reveals that Horne's ascertainment showing, conducted by Mr. John Capps, General Manager of Station KWCK, and future General Manager of Horne's proposed FM station, was preliminarily divided into population groups covering the following segments:

(1) Business
(2) Religious
(3) Local, City and State Government
(4) Labor
(5) Industrial
(6) Agriculture-rural
(7) Civic organizations
(8) Education
(9) General Public
(10) Minority

15. Personal consultations were made by Mr. John Capps, a long-time resident of the community, with the following community leaders and members of the general public:

Community Leader, Organization, If Any

(December, 1969, Amendment)

(1) Lloyd Henry, Prosecuting Attorney.
(2) Lawnie Coffman, Boy Scouts, Scout Master.
(3) J. Ed Lightle, Attorney and State Senator.
(4) Duane Treet, Searcy Optimist Club.
(5) James Patterson, Superintendent of McRae Public Schools.
(6) Herb Bacon, Chamber of Commerce; Retail Merchants Committee.
(7) Bill Rodgers, Retail Merchant.
(8) Wallace Baker, Beebe School Board Member.
(9) J. H. Wiseman, President, Wood Freeman Lumber Co.
(10) Gene Boone, City Council Member.
(11) James W. Ahlf, Superintendent, Searcy Public Schools.
(12) W. E. Orr, White County School Supervisor.
(13) Waymon Goree, Chief of Police, Searcy.
(14) J. W. Morris, Fire Chief, Searcy.
(15) John Greer, Field Supervisor, Child Welfare Division, Welfare Dept.
(16) John Davis, Sheriff, White County.
(17) Perrin Jones, Publisher.
(18) Albert D. Kissling, Searcy Ministerial Alliance.
(19) Elmer Baker, Alderman, City of Searcy.
(20) Leslie E. Carmichael, Mayor, City of Searcy.
(21) Mrs. Frank Drennon, Secretary, Local V.F.W.
(22) David Seward, Customer Service Rep., Ark. Power and Light Co.
(23) Bill Davis, County Clerk, White County.
(24) Rueben Adams, Board Member, Searcy Special School District.
(25) Mrs. Mary Wilson, Chief Operator, Southwestern Bell Tele. Co.
(26) Dell Coyle, Pres., Business and Professional Womens Club.

(27) Louis Horn, Postmaster, U.S. Post Office.
(28) Leonard Stevens, Postmaster, U.S. Post Office.
(29) Bill Rousell, Pres. elect of Searcy Kiwanis Club.
(30) Mrs. Ernestine Rogers, White County Extension Home Economist.
(31) Sid Quattlebaum, Public Surveyor, Elected County Surveyor.
(32) Larry Waters, Manager, Sears Roebuck & Co.
(33) James W. Kelley, Asst. County Agent, County Extension Office.
(34) Walter England, Dean of Students, Ark. State Univ.
(35) Inez Bishop, County Librarian, White County Library.
(36) Tom Abington, Pres., Citizens Bank of Beebe.
(37) Glen Pace, Minister.
(38) Doyle Cothern, Retail Merchant.
(39) Charles Smith, Manager, White County Fair Association.
(40) Howard Perry, Superintendent, International Shoe Company.
(41) Curtis Walker, Plant Manager.
(42) James E. Russell, Plant Manager.
(43) Lott Tucker, Business Manager, Harding College.
(44) Herman West, International Dir., Lions Club.
(45) Joe Slocum, Pres., Searcy Jaycees.
(46) Jimmy Miller, Mayor, Judsonia.
(47) Richard Deener, Dir., Searcy Housing Authority.
(48) Floyd Holifield, Admin. White County Memorial Hospital.
(49) Wayne Hartsfield, Executive Pres. First Nat'l Bank; Pres. Searcy Chamber of Commerce.
(50) Harry Latimer, Immediate Past Commander, V.F.W.
(51) C. D. Christian, County Agent, White County.
(52) Lloyd Brown, Dir. White County Farm Bur.
(53) Geral Pankey, Trooper, Ark. State Police.
(54) Alvin Vanhook, Member Searcy School Board.
(55) Charles Yingling, Municipal Judge, City of Searcy.
(56) Ned Becker, Pres., Kiwanis Club of Searcy.
(57) Beverly Hogan, Dir. Dept. of Public Welfare.
(58) King Blackburn, Manager Employment Security Division.
(59) Perry Mason, Lt. Governor, Mo-Ark Division Kiwanis Club.
(60) Carl Stevens, Manager Farmers and Merchants Bank.
(61) Kelmer Johnson, Manager Bennett's Furn. and Appliance.
(62) Rev. T. J. Williams, Pastor.
(63) Darrell Hickman, Pres. White County Bar Assoc.
(64) Clayton Moffitt, Pres. United Shoe Workers, Local #179.
(65) John Miller, Manager Feed Manufacturing Plant and Chicken Hatcher.
(66) Jack Pruitt, Farmer and Realtor.
(67) Amos Lester, Farmer and Cattleman.
(68) Mrs. Hazel Hays, Elementary School Teacher.

General Public (December, 1969, Amendment)

(1) Betty LaFantasie.
(2) Bronnie Jones.
(3) L. N. Hilger.

16. In ascertaining community needs as demonstrated in Horne's December, 1969 amendment, Mr. Capps worked closely with Reverend T. J. Williams, a Searcy minister, member of the Black race, and a developer of the Regional Office of Economic Opportunity (OEO) located in Searcy. The community needs expressed by Rev. Williams have been correlated into Horne's analysis of significant community problems, the evaluation of same, and the program proposals designed to assist the community in solving its problems.

17. Evidence concerning the above listing was contained in Horne's Exhibit No. 5. Additional consultations, also a part of Horne's Exhibit No. 5, the same having been made by Mr. Capps, are as follows:

Community Leader, Organization, If Any

(May 17, 1971, Amendment)

(1) Mrs. Juanita Lowery, Searcy International Shoe Workers Union.
(2) Dr. Olen Bridges, Medical Doctor.
(3) Burton Scott, Co-owner/manager of C. H. Scott and Son.
(4) Jimmy King, Owner/manager Beebe Hardware and Furn.
(5) James Cox, Manager Magic Mart Discount Center.
(6) Ed Miller, Owner/manager Miller Packing Co.
(7) Douglas Merritt, Mayor, City of Higginson.

General Public (May 17, 1971, Amendment)

(1) Mrs. Robert Schafer.
(2) Mr. Francis Mason.
(3) Carl Siler.
(4) Floyd Key.
(5) Nick Crozier.
(6) Fred West.
(7) Cecelia Sutton.
(8) Gerald Williams.
(9) Naomi Hefner.
(10) Mrs. Harley Harris.
(11) G. C. Todd.
(12) Vilas Womack.
(13) Mrs. Wallace Davis.
(14) Steve King.
(15) Mrs. Roger Duncan.
(16) Ernie Watkins.
(17) Hubert Ragen.
(18) Charlie Smith.
(19) Olen Yarbrough.
(20) Red Miles.
(21) Oran Ray.
(22) Harold McEuen.
(23) John Hamilton.
(24) John Hamilton.
(25) Mrs. Eloise Yingling.
(26) Jake Caruthers.
(27) Mrs. Kay Hill.
(28) E. N. Duncan.
(29) John J. Shourd, Jr.
(30) Luther S. Baugh.

18. Horne's analysis of significant community problems, the evaluation of same, and the program proposals designed to assist the community in solving its problems, are attached hereto with the respective designations of Attachment A, B and C. The same are incorporated herein. Each of the attachments were received in evidence as part of Horne's Exhibit No. 5.

Conclusions of Law

19. In designating an ascertainment issue with respect to Horne's FM application, the Commission, at paragraph 3 of its Order of designation stated, among other things, that in the captioned proceeding:

> . . . neither applicant appears to have contacted a representative cross-section of the area. Both, however, have provided adequate comments from the individuals which have been contacted. In addition, neither has adequately provided a listing of specific programs responsive to specific community problems as evaluated. As a result, we are unable at this time to determine whether either of the applicants is aware of and responsive to the needs of the area. Accordingly, *Suburban* (*Suburban Broadcasters*, 30 FCC 951 (1961)) issues are required.

In meeting the specified issue, Horne completed a further community survey (May 17, 1971, amendment), analyzed the significant community problems, evaluated same, designed program proposals to assist the community in solving its problems, and presented evidence on all of the foregoing (Horne's Exhibit No. 5). Attention was given to problems and suggestions of minority groups (BPH–6810, amendment of December, 1969, Official Notice requested). Horne's evidence concerning the ascertainment issue was received under a personal knowledge affidavit of "Mr. John Paul Capps, Station Manager, Station KWCK" as sworn to before a Notary Public in the City of Washington, District of Columbia, on November 1, 1971.

20. Issues and further action on the Tellum application have become mooted by the actions recited, *supra*. The evidence of record demonstrates that Horne has ascertained the community's needs and interests of the area to be served, and has proposed persuasive means by which it will meet those needs and interests. Thus, it is concluded that Horne has met its burden with respect to the designated ascertainment issue; and accordingly, IT IS ORDERED that, unless an appeal to the Commission from this Initial Decision is taken by a party or the Commission reviews this Initial Decision on its own motion under Section 1.276 of the Rules, the application of Horne Industries, Inc. for a new FM broadcast station on Channel 257A, 99.3 mcs, Searcy, Arkansas, BE AND IS HEREBY GRANTED.

JAMES F. TIERNEY,
Administrative Law Judge,
Federal Communications Commission.

ATTACHMENT A

A careful analysis of the findings of personal consultations with representatives or leaders of the significant groups and members of the general public which compose the community indicates the following community problems to be of most significance:

1. Better Educational Program regarding drug use and abuse.
2. New and additional industry.
3. A need for a fully informed Citizenry on National, State and Local affairs.
4. Problems relating to violence, and general crime.
5. Better traffic control, both on city streets and federal and state highways.
6. Better roads.
7. More parks and recreational facilities.
8. Closer cooperation between all the towns in White County, especially merchant cooperation.
9. Day care center for working mothers.
10. More job training for the unskilled worker.
11. A need for a greater awareness of religious values.
12. More public housing, especially for lower income groups.
13. Better health service for the rural area.
14. Better enforcement of trash and litter laws on roadsides.
15. Broadcast of nighttime community sports events, and nighttime radio.
16. Solution to agricultural and farm problems.

ATTACHMENT B

Applicant proposes to broadcast the following types of programs to meet the problems and needs of the community as evaluated from consultations with a representative cross-section of members of the community.

Needs to be served	*Applicant proposes*
No. 11	Broadcast five minute devotional at 8:55-9:00 a.m. daily.
No. 11	Broadcast thought-for-day 6:00 a.m. daily.
No. 11	Broadcast local church programs 7:15 to 9:30 a.m. Sunday mornings.
No. 11	Broadcast at least 30 minutes to one hour of religious music daily, times to be flexible (not to be block programming).
No. 11	Give free announcements to churches for news of revivals and special events.

104-008—73——5

Nos. 1, 2, 3, 4, 5, 10, 12, 13, 14.	Scheduling local news programming at 6:30–6:40 a.m., 7:30–7:45 a.m., 9:30–9:45 a.m., 12:00–12:15 p.m., 4:45–5:00 p.m., 9:00–9:10 p.m. Also to include special reports on current problems of the community, spotlighting a single problem or need featuring interviews with leaders of community and members of general public, directed at the problem or need, interviewing persons of varying legitimate opinions.
Nos. 1, 3, 4, 5, 8, 10, 12, 14.	Schedule, as needs and opportunities develop, round table discussion and forum type program in which opposing views on solving problems can be aired at least once weekly.
Nos. 3, 13, 16, 19	Schedule regular weekly County Agent and Extension Home Economist program aimed at agriculture problems, homemakers and working mothers.
No. 3	Schedule regularly, and as available, direct reports from Senators, Congressmen and State Legislators. Schedule on a rotating basis unless a topic of interest could best be served by a particular member of the group.
No. 3	Broadcast weekly and monthly in-depth analyses of current National and International problems.
No. 1	Schedule, as available, appropriate types of programs dealing with drug use and abuse, using as sources, local prosecuting Attorney, University of Arkansas Medical Center, Governors Commission on Drugs, National Association of Broadcasters and local health officials. Heavy spot announcements scheduled from National Office on Drug Abuse.
Nos. 2, 8, 10, 12	Monthly programs with President of Chamber of Commerce and Chairman of Industrial Development Commission.
Nos. 1, 4, 5, 14	Schedule interviews with local police chiefs, sheriff, prosecuting attorney, municipal judge, etc.
No. 16	Schedule daily special farm reports on weather and river conditions plus market analysis.
No. 8	Make available 30 minute program weekly "For a Better White County" which will include discussions and interviews relating to the activities and development of the County.
No. 5	Broadcast weekly interviews with police chief, sheriff and state highway patrol pin pointing traffic congestion, discussion of accidents and causes, etc. and ways to prevent them.
No. 10	Conduct monthly interviews with Director of Vocational Technical School, Director of Employment Security Division office.
Nos. 7, 15	Schedule coaches, interviews, play by play of local football, basketball and other athletic events during time when possible.
Nos. 1, 3, 7, 8, 9, 10, 14.	Make time available to all community and civic groups to legitimate organizations for special programs involving the promotion of community projects.
Nos. 1, 13	Schedule regular series on health, medical, and drug problems "Your Health at Stake", featuring local doctors and others in the health field. Also using material from local, state and national Medical and Dental associations.

ATTACHMENT C

Title	Source	Type	Description	Time and duration	How often aired
Local news	L	N	News of local events (Full time news director).	6:30 a.m., 10 minutes 7:30 a.m., 10 minutes 9:30 a.m., 15 minutes 12 noon, 15 minutes 4:45 p.m., 15 minutes 9 a.m., 10 minutes	6 days week (Mon. thru Sat.).
Morning devotional	L	R	Local ministers	8:55 a.m., 5 minutes	5 days week (Mon. thru Fri.).
Church programs	L	R	Local ministers with prepared sermons.	7:15 a.m., 15 minutes 7:30 a.m., 30 minutes 8 a.m., 30 minutes 8:30 a.m., 30 minutes 9 a.m., 15 minutes 9:15 a.m., 15 minutes 11 a.m., 60 minutes	Sunday only.
Religious music	R	E/R	Top gospel and religious songs.	Interspersed in 6-8:30 a.m. time segment, 20 percent religious music in this block.	6 days a week (Mon. thru Sat.).
Hymns from Harding	R	R	Harding College Chorus.	4:15 p.m., 15 minutes	Weekly.
"From the People"	R	PA	Forum type discussion with leaders of groups and representatives of general public, including chamber of commerce, industrial development committee.	11 a.m., 20 minutes Friday.	Biweekly.
White County Extension Service Agent.	L	PA	Dealing with agricultural pest, pollution, etc.	11:45 a.m., 10 minutes, Wed.-Fri.	Twice weekly.
University of Arkansas Extension Home Con.	Rec	PA	Household, shopping, and timely information directed at housewives, especially working mothers.	6:55 a.m., 5 minutes, Wednesday.	Weekly.
Church Calendar	L	PSA	Announcements of local church services, meetings.	7 a.m., 15 minutes, Sundays.	Do.
Capitol Report	R	PA	Interview with Senators, Congressmen, or State legislature.	11:50 a.m., 10 minutes, Friday.	Do.
Periscope	R	PA	Discussion of business and economic conditions.	12:25 p.m., 5 minutes, Sunday.	Do.
Farm Markets	L & R	A	Market news and trends.	12:45 p.m., 5 minutes, Mon.-Fri.	5 days weekly.
Legislative Report	R	N	Daily happenings in Arkansas Legislature.	5 p.m., 15 minutes, when in session.	When legislature is in session.
City Council Report	L	N	Reports from city council.	8 a.m., 5 minutes, Tuesdays.	Twice monthly.
"Know your Drugs"	L	PA	Discussion of dangers of drug use and abuse.	9:55 a.m., 5 minutes, Fridays.	Weekly.
News-in-depth	L	N	In depth, behind the scenes report of major national news happenings.	1:15 p.m., 15 minutes, Saturday.	Do.
Chamber of Commerce Reports.	R	PA	Discussion of business and actions of chamber of commerce.	8:30 a.m., 15 minutes, Saturday.	Monthly.
Law Enforcement today.	R	PA	Discussion of law, how citizens help with local law officials.	3 p.m., 10 minutes, Saturday.	Twice monthly.
"For a Better White County".	R	PA	Discussion, interviews with leaders from groups and general public focusing attention on current problems.	4 p.m., 15 minutes, Saturday.	Monthly.

ATTACHMENT C—Continued

Title	Source	Type	Description	Time and duration	How often aired
"Your Health at Stake".	R	PA	Discussion with Doctors, Health Officials on any health subject appropriate.	11:45 a.m., 15 minutes, Tuesday.	Do.
All American Perspective.	R	PA	Discussion of needs and interest of labor and minority groups.	6:15 p.m., 10 minutes, Wednesday.	Twice monthly.
Learning a Trade.....	R	PA	Discussion with Director of Foothills Vo-Tech School and Director of Employment Security Division office, etc.	7 p.m., 10 minutes, Tuesday.	Do.
Hospital report.....	L	N	Admissions and dismissals from two hospitals in County.	9:35 a.m., 5 minutes...	6 times weekly.
Obituaries.....	L	N	News of deaths at end of each local newscast.	2½ minutes at end of each local newscast.	36 times weekly.
Your Social Security ..	L	PA	Discussion of Social Security Benefits, questions thereof and factual information.	1:05 p.m., 5 minutes, Tuesday. Tape and repeat Thursday, 7:05 p.m.	Twice weekly.
Arkansas Outdoors....	L	S	Discussion on fishing, hunting & other outdoor recreational sports with information from Director Arkansas Game and Fish.	10:05 a.m., 5 minutes, Saturday.	Weekly.
Trading Post.....	R	PA	Free Classified Advertising.	12:30 p.m., 15 minutes, Mon.-Fri.	5 times weekly.
Party Line.....	L	Talk	Call in talk show.....	10:05 a.m., 55 minutes, Mon.-Fri.	Do.
Farm News and Views.	R	PA	Discussion of timely agricultural topics.	10:30 a.m., 5 minutes, Saturday.	Weekly.

GENERAL PROGRAMMING

In addition to the specific programs and exact times of schedule, the following programs of general scheduling nature will be broadcast. The commission is asked to please note that because of the nature and types of programs, it is difficult to specify certain times of day and specific dates for their broadcast, but applicant *will* broadcast, at the required or appropriate time, these programs:

A. In football season, live coverage of the games of the four football teams in the County. When more than one game is being played simultaneously, the game with the most interest (must be at discretion of applicant) will be aired live, the other will be taped. Also in this case, teams who share interest of public 50–50, live airing and tape playback will be on a rotating basis.

The same principle applies to the basketball season, although there are more basketball teams than football, scheduling of games at the same time is less likely.

Other sporting events such as Little League Baseball, American Legion Baseball, track meets, etc., will be broadcast. Here again, to specify exact times and dates in this proposal would be extremely difficult. Coaches interviews will be scheduled the day of the games played.

SPECIAL EVENTS PROGRAMS

B. Applicant will sponsor:

1. An all star basketball team banquet (from service area) at the end of season, broadcasting it live and;

2. All star football team banquet (conducted same as above).

At these functions, applicant's facility will award prizes to Coaches, Outstanding Players, Etc. These events will be new to the community in the sports field, inasmuch as local nighttime radio has not been available in the past.

3. Applicant's facility will sponsor twice annually a local fashion show, cooperating with local merchants and ladies social clubs in staging the event, to be broadcast live (nighttime).

4. Applicant will sponsor and work with local cultural and historical groups in producing an annual play, utilizing members of drama clubs at the high school and college levels. To be scheduled and broadcast live in the autumn season, plus giving spot announcements and interviews to their other events.

5. At the date requested by the following groups, applicant will furnish its facilities and sufficient free program time and spot announcements to:

A. Lions Club for its radio auction (20 hours).
B. Jaycees and for its "Jaycee Day" (8 hours).
C. Kiwanis Club for its merchandise auction (5 hours).
D. Girl Scouts and their cookie sale (4 hours).
E. The Optimist Club's Boy Scout Building Program (5 hours).
F. Plus any other group with legitimate purpose.

6. Applicant proposes to offer to all candidates for public office, free broadcast time on a fair and impartial basis. This will be scheduled on Saturday afternoons during political campaigns, or whatever time is most appropriate, (in keeping with the FCC Commercial Practices Rule and the NAB Code of Good Standards to which applicant will subscribe).

GENERAL WEATHER PROGRAMS

In addition to hourly weather reports, direct from the Weather Bureau at Little Rock, Arkansas, applicant's facility will, when a severe weather bulletin or tornado alert is received, immediately cease regular programming and enter into a prepared emergency weather programming format, calling on its toll free telephone lines to all areas of the community of service with on-the-air reports of conditions. Applicant will work with local Civil Defense and Law enforcement officials to provide the finest possible service in this respect. This is another important reason for applicant to have local nighttime facilities and to utilize its latest equipment and telephone system to expedite the gathering of weather information and the dissemination thereof. This is a vital service to an area described as "Tornado Alley".

F.C.C. 73-887

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of INTERNATIONAL RECORD CARRIERS' SCOPE OF OPERATIONS IN THE CONTINENTAL UNITED STATES, INCLUDING POSSIBLE REVISIONS TO THE FORMULA PRESCRIBED UNDER SECTION 222 OF THE COMMUNICATIONS ACT	Docket No. 19660 RM-690

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1973; Released August 31, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID ABSENT.

1. The Commission has before it (a) Amended Complaint and Petition and Motion for Interim Relief filed May 17, 1973, by The Western Union Telegraph Company (WU), (b) Oppositions thereto filed June 29, 1973, by RCA Global Communications, Inc. (RCAGC), ITT World Communications Inc. (ITTWC), Western Union International, Inc. (WUI) and TRT Telecommunications Corporation, and (c) Reply to Oppositions filed July 12, 1973, by WU.

2. WU's Amended Complaint and Petition and Motion for Interim Relief filed May 17, 1973, is an amendment to a Complaint and Petition filed July 23, 1970 requesting the Commission, pursuant to Sections 222(e)(3) and 201(a) of the Communications Act, to issue an order increasing the division of charges for landline handling of outbound and inbound international message traffic from 6½¢ to 13¢ per word for full-rate messages with proportionate increases for other message classes.

3. The original Complaint and Petition noted that the landline handling charges for international telegrams were only about one-half of the charges existing in 1970 for the handling of interstate domestic telegrams. On the basis of the amended Complaint and Petition, it appears that due to an increase in charges for domestic telegrams, current charges for handling international telegrams are only at about one-third the level of domestic telegram handling charges.[1]

4. On December 13, 1972, the Commission adopted a Notice of Inquiry and Proposed Rule Making instituting this Docket Proceeding and incorporated, for appropriate action, WU's original request for increase in landline charges for international messages together with a number of related issues concerning existing methods and practices of pickup and delivery of international traffic originating in or destined to the hinterland, and the overall relationship between WU and the international carriers.

[1] Increases in domestic telegram handling charges became effective August 13, 1973.

5. In the likelihood that a determination of the appropriate landline charges in a proceeding involving other complex and related issues will be time-consuming, WU's amended pleading requests that the Commission grant it an interim increase in landline haul charges from 6½¢ to 11½¢ per word for full-rate messages and from 3¼¢ to 5¾¢ per word for letter telegrams with appropriate increases in other message classes.

WU Pleading

6. In support of its requested interim increase WU maintains that it is faced with an immediate crisis in the form of severely depressed earnings from its Public Message Service (PMS) requiring immediate remedial relief. It asserts that in 1972 it incurred losses of over $15 million in providing total PMS, or a negative 8.9% return on investment, and that over two-thirds ($10.4 million) of this PMS deficiency has been incurred in the landline handling of international telegrams.[2] Continuation of these losses, asserts WU, would prejudice its long-term ability to provide vital public services. WU believes that landline haul charges for international messages should be set at a level equivalent to those of domestic messages. The latter charges, according to WU, while keeping interstate operations in the black, will not produce a fair return for the entire PMS, or regain an improving earning trend necessary to enable the company to restore its ability to raise new capital and refinance existing debt at a reasonable cost. Further and major increases in domestic PMS charges at this time would, in WU's opinion, be imprudent and disrupt hoped for favorable reaction to service improvements from its modernization program.

7. In view of this, WU seeks an increase in revenues from the landline handling of international messages, which it characterizes as the largest contributor to the PMS earning deficiency.[3] It points out that there has been but one increase in such charges since 1958.[4] On the other hand, it states, rising unit costs required interstate PMS rates to be increased a number of times to 300% of the 1958 level. It believes the interim increases sought are no more than sufficient to meet a basic minimum revenue requirement for landline handling and are justified on the basis of the pleadings filed.

8. WU submitted the results of a cost study (which it states was made on a conservative estimate) showing that, on the basis of 1972 results, and assuming a pretax return of 18%, the revenue requirement in 1972 for the landline haul was $29.643 million, compared to actual landline haul revenues for that year of $14.260 million. It points out that its interim rate increase request would have resulted in $24.983 million and stresses that in reaching this figure as an interim goal it understated its cost for the service, and that by using a 9% target pretax return it also understated its return requirements.

9. Anticipating that the international record carriers (IRC's) would be unwilling to absorb the increased interim charges and, therefore, pass them on to the public, WU recommends that the existing

[2] According to WU, this is the greatest PMS deficiency in any recent year except 1971 when earnings were adversely affected by the largest strike in its history.
[3] WU states that it plans to file a further amendment updating its original petition.
[4] In 1966 a 1¢ per full-rate word, or an 18% increase was granted. Western Union Telegraph Co. RM–642, 2 FCC 2d 892, 3 FCC 2d 314.

maximum levels applicable to International Public Message Service charges of the bellwether carrier (RCAGC) be removed.[5] With such removal it suggests that the international carriers would be free, pursuant to Section 203 and Part 61 of the Rules, to file increased charges for International Telegram Services, supported by relevant cost and market data. In the interim, to assure protection of the public, WU proposes that the Commission impose an accounting order with respect to any such increases requiring WU and the international carriers to account for any increased charges collected from the public and to effect a refund of such portion, if any, of the interim increase found, after hearing, to be excessive.

10. WU appended its amended Complaint and Petition with a Memorandum of Law directed to the Commission's authority to grant, pursuant to Sections 4(i), 4(j), 201(a) and 222(e)(3) of the Communications Act, the requested interim relief. The company also submitted affidavits of two officers, setting forth facts in support of its pleading.[6]

Opposition Pleadings

11. In view of the similarity of the oppositions of the international carriers (RCAGC, WUI, ITTWC and TRT), they are summarized without specific identification as follows:

(a) An interim increase, without hearing, is contrary to the hearing requirements of Sections 201(a) and 222(e)(3),[7] which require, as indicated by the Commission in prior cases as well as rule, a determination on the record after opportunity for hearing; no exception is made for interim relief, and there are material issues of fact;

(b) the matter of landline divisions is at issue in Docket No. 19660, along with a number of other matters involving the relationship between WU and the record carriers, all of which the Commission has stated are interrelated; a grant of interim relief to WU would violate that procedure, and such request is tantamount to a tardy request for reconsideration of this procedure which is barred by statute;

(c) Western Union has argued, in oral argument in Docket No. 19660 on the question of whether prior Section 222 authority is necessary to the filing by IRC's of free hinterland direct access tariffs; that, in view of the potential $6 million loss to it from such practices, there should be a hearing and an investigation on such matter in the context of Section 222 prior to the filing of such tariffs; similarly, there should be a hearing on the requested interim landline increase in view of the potential $9.5 million impact on the IRC's;[8]

(d) an accounting order against WU will not necessarily safeguard the IRC's in view of past Commission action on domestic PMS and telex increases; moreover, the use of millions of dollars would be lost during the interim period; nor would a pass-through to the public in the form of increased international message rates necessarily protect the IRC's since such increase could diminish volume to an extent affecting total international PMS revenues;

(e) to grant the requested interim increase would cause possible irreparable injury to the international carriers unless the Commission also grants their requests for new operating centers and direct access proposals contained in Docket No. 19660, which could provide an alternative to increased international charges;

(f) WU's claims of severe financial crisis are dubious; WU's Annual Report

[5] International Telegraph Message case, 25 FCC 535, 640 (1958) prescribed a fair rate of return in the range of 7.5 to 8.5 percent for RCACG.

[6] Copies of work papers underlying the affidavits were furnished to the Commission and the international record carriers to permit an expedited review.

[7] Memoranda of Law and/or Points and Authorities were filed by WUI, RCAGC and ITTWC in support of this proposition.

[8] Oral Argument, February 13, 1973 (Docket No. 19960).

for 1972 shows overall net earnings of $40.8 million, the highest since 1968, and it has recently floated a $60.5 million bond issue;

(g) the validity of WU's cost allocations which base revenue requirements for landline haul upon an allocation of costs between the domestic service and domestic handling of international messages is questionable because it omits to take into account declining volume of domestic traffic and generally stable volume of international traffic and in effect transfers a large revenue requirement burden from domestic users to international users; accordingly, a full hearing is required to measure the impact of this burden before any increase is ordered; and

(h) an accounting order against the international carriers (assuming a pass-through to the public) is impractical; the administrative details and cost of maintaining a file on all customers who send messages during the interim period, locating them, and determining the amount of the refund, would be staggering.

Discussion

12. We have carefully reviewed the points and authorities advanced by WU to support the proposition that the Commission, notwithstanding the hearing requirements of Section 222(e)(3), is empowered to grant interim relief, pending completion of such hearing. We have also reviewed the international carriers' oppositions with equal care. We believe that the question is sufficiently important to warrant a full briefing and oral argument on the conditions, if any, under which the Commission may grant interim relief to WU.

Accordingly, IT IS ORDERED, that oral argument is hereby scheduled to be heard before the Commission *en banc* at its offices in Washington, D.C., on September 25, 1973, at 9:00 AM on the following question:

Under what circumstances, if any, may the Commission grant the request of Western Union, in whole or in part, for an interim increase in landline charges for outbound and inbound international messages?

IT IS FURTHER ORDERED, that the parties to the oral argument, and the time allotted to each, shall be as follows:

	Minutes
Western Union Telegraph Company	60
ITT World Communications Inc	15
Western Union International, Inc	15
RCA Global Communications, Inc	15
TRT Telecommunications Corporation	15

Provided, however, that should the parties agree among themselves to a different allocation of time, or should the international carriers agree among themselves on a different allocation of the time allotted to them as a group, the Commission should be so notified one week in advance of the date set herein for oral argument; and

Provided, further, that The Western Union Telegraph Company may reserve for rebuttal a portion of the time allocated to it.

IT IS FURTHER ORDERED, that the above-named parties shall, on or before, September 17, 1973, file an original and 19 copies of a brief on the matters in question.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-750

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR ISSUANCE OF TAX CERTIFICATE PURSUANT TO SECTION 1071 OF THE INTERNAL REVENUE CODE BY KTFI BROADCASTERS, INC.

ORDER

(Adopted July 11, 1973; Released July 17, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. The Commission has before it a "Request for Issuance of a Tax Certificate Pursuant to Section 1071 of the Internal Revenue Code of 1954", filed on February 15, 1973 by KTFI Broadcasters, Inc. (KTFI) in connection with its sale of Station KTFI–AM, Twin Falls, Idaho (BAL–6218, granted January 10, 1968).

2. The circumstances surrounding the sale of KTFI are as follows: On May 7, 1970, KMSO–TV, Inc. filed an application to acquire all of the stock of the KLIX Corporation, licensee of Station KMVT, Twin Falls, Idaho (BTC–6256, granted December 16, 1970, effective December 30, 1970). Because Dale G. Moore controlled KMSO–TV, Inc. and also controlled the licensee of Station KTFI–AM, also in Twin Falls, the proposed acquisition of KMVT–TV was inconsistent with the Commission's then recently adopted "one-to-a-market" rules. (Section 73.35 and 73.636 as amended by the First Report and Order in Docket 18110, 22 FCC 2d 306, adopted March 25, 1970, released April 6, 1970). The "one-to-a-market" rules proscribe the acquisition of broadcast stations which will result in the common ownership or control of aural and television broadcast stations in the same market. The Commission refused to waive the "one-to-a-market" rules and made the grant of the KMVT–TV application conditioned upon the divestiture by Mr. Moore of his controlling interest in Station KTFI within one year. (The rules were not waived; rather Mr. Moore was given the 1 year period within which to dispose of KTFI based on the representation that one of transferor's principals, A. C. Glassman, had died making it difficult for them to find another buyer.) On February 13, 1973, KTFI filed an application (BAL–7842) to assign its license to Greentree Broadcasting Company in accordance with the divestiture condition. That application was granted on May 22, 1973 by the Chief of the Commission's Broadcast Bureau pursuant to the authority delegated to him under Section 0.281 of the Rules.

3. In support of its request KTFI puts forward essentially two grounds:

1. That, but for the time required to obtain the many needed signatures, the application would have been filed prior to the adoption of the one-to-a-market rules in April 1970; and

2. That his sale is "involuntary" within the meaning of the Commission's decision in *Roy H. Park Broadcasting, Inc.*, 29 FCC 2d 218, reconsideration granted, 36 FCC 2d 116 (1972).

Neither of these contentions supports the issuance of a tax certificate in this case. With regard to the first argument it must be pointed out that the Commission's "one-to-a-market" rules of Docket 18110 were proposed in a Notice of Proposed Rulemaking which was released on March 28, 1968. Thus, it cannot be said that KTFI was taken by surprise when the proposed rules were adopted. The necessity of obtaining the many signatures which may have delayed the filing of the application was no justification for waiver of the "one-to-a-market" rules. The fact of the matter is that the application was filed over a month after the rules were adopted. As to the second argument, the *Park* case cited by applicant, is not in point. There, because of overlap, a television station could not have increased its power so long as a minority stockholder retained its interest. Thus, in order to meet another important policy objective (i.e. improvement of existing television service) the minority stockholder was required to terminate his interest. In this case, on the other hand, the principals of KTFI, through the acquisition of another facility "voluntarily" placed themselves in a position of non-compliance with the rules and willingly agreed in advance to divest themselves of KTFI in order to acquire KMVT–TV.

4. In 1956 we issued a Public Notice which expressly dealt with the issuance of tax certificates.[1]

> To parties who already held the maximum number of broadcast interests in a particular service or in a particular community permitted under the Commission's rules, but [who] were desirous of acquiring a new station and, in order to accomplish this objective, had to dispose of their interests in one of their existing stations.

We there stated that upon review of the legislative history of Section 1071 that tax certificates would not be issued in connection with station sales under such circumstances. In making that decision we noted that,

> Nothing in the legislative history of Section 1071 indicates that it was intended to apply to situations where a licensee voluntarily chose to dispose of one broadcast facility in order to obtain another facility and disposition of the first facility was necessary because of the Commission's multiple ownership or duopoly rules or policies.

Consistent with that policy, in granting the application for sale of Station KYDO–TV, Salem, Oregon subject to divestiture within three years because of the extensive overlap of its Grade A and B contours with those of assignee's other station, we stated that no tax certificate would be issued when the divestiture took place. *Letter to Valley Broadcasters, Inc.* dated September 29, 1972, FCC 72–872.

5. In the instant case the application for acquisition of KMVT–TV was filed on May 7, 1970 over a month after the release of the First Report and Order in Docket 18110 adopting the "one-to-a-market"

[1] Public Notice of September 27, 1956, FCC 56–919, Mimeo No. 36410.

rules. Thus, as in the KVDO–TV case the acquisition of KMVT–TV was inconsistent with our rules. Consequently the applicant voluntarily offered to sell its AM station in order to acquire KMVT–TV in the same market. Accordingly, since the divestiture of KTFI was voluntary and was not required by any change in the Commission's policy or adoption of a new policy, this request is governed by our 1956 Public Notice. In accordance with the policies stated in that notice, the issuance of a tax certificate in connection with the sale of KTFI is not warranted.

6. In view of the foregoing, the captioned request for a tax certificate in connection with the sale of Station KTFI is hereby denied.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-307

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
LEXINGTON COUNTY BROADCASTERS, INC., CAYCE, S.C.	Docket No. 19568 File No. BPH-7605
WILLIAM D. HUNT, CAYCE, S.C.	Docket No. 19569
For Construction Permits	File No. BPH-7658

MEMORANDUM OPINION AND ORDER

(Adopted August 27, 1973; Released August 28, 1973)

BY THE REVIEW BOARD: BOARD MEMBER NELSON NOT PARTICIPATING. BOARD MEMBER PINCOCK CONCURRING IN RESULT.

1. This proceeding, involving the mutually exclusive applications of Lexington County Broadcasters, Inc. (Lexington County) and William D. Hunt (Hunt) for a new FM broadcast station in Cayce, South Carolina, was designated for hearing on a standard comparative issue by an Order issued by the Chief of the Broadcast Bureau, acting under delegated authority of the Commission, 37 FR 16820, published August 19, 1972. On September 5, 1972, Lexington County filed a petition to enlarge issues, requesting several issues against Hunt, including a Rule 1.65 issue on the ground that Hunt allegedly failed to fully report the broadcast interests of his wife, Agnes C. Hunt. By Memorandum Opinion and Order, released April 27, 1973,[1] the Review Board denied Lexington County's petition, stating, with respect to the Rule 1.65 issue, that, "[w]hile Hunt did not report [certain] changes [in his wife's broadcast interests], the omissions are not serious, appear to be the result of inadvertence, and appear to have no decisional significance." 40 FCC 2d at 696, 27 RR 2d at 420. Shortly thereafter, on May 14, 1973, Lexington County filed another petition to enlarge issues (styled a "petition to broaden issues") which is now before the Board.[2] In its petition, Lexington County requests the Board to add the following six issues against Hunt:

(1) To determine the extent to which William D. Hunt concealed material facts from the Commission with respect to his pending application and whether William D. Hunt has kept his application current and complete as required by Section 1.65 of the Commission's Rules.

(2) To determine whether William D. Hunt's proposed bookkeeper, Agnes C. Hunt, engaged in fraudulent billing practices while Comptroller-Treasurer at Station WTMP, Tampa, Florida.

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[1] 40 FCC 2d 694, 27 RR 2d 416.

[2] Also before the Board for consideration are: (a) opposition, filed May 29, 1973, by the Broadcast Bureau; (b) opposition, filed May 30, 1973, by Hunt; and (c) reply, filed June 14, 1973, by Lexington County.

(3) To determine the facts and circumstances surrounding the Station WTMP promotion, "Soul Night", the use of the proceeds therefrom, and the participation of Agnes C. Hunt, therein.

(4) To determine whether any person other than William D. Hunt has an interest in the latter's application and, if so, the nature and extent of such interest.

(5) To determine whether grant of the application of William D. Hunt would contravene the Commission's policies against "cross-interests".

(6) To determine whether, in light of the above issues, William D. Hunt is qualified to become a Commission licensee.

2. Lexington County's petition is predicated upon Agness C. Hunt's relationship with: (a) her husband's application; (b) Speidel Broadcasters, Inc.;[3] and (c) Station WXRY (FM), Columbia, South Carolina.[4] Petitioner contends that events have occurred since the filing of its September 5 petition (see paragraph 1, *supra*) which demonstrate that the Board was misled with respect to Mrs. Hunt's actual relationship to her husband's application and the reasons that he concealed pertinent information concerning her other broadcast interests; and that most of these facts were not revealed until release of the Commission's Memorandum Opinion and Order in Docket 19674 (*WOIC, Inc.*, 39 FCC 2d 355, 26 RR 2d 790) on February 1, 1973, designating the renewal application of Station WOIC for hearing. According to Lexington County, the Commission found that serious questions had been raised concerning improper conduct by WOIC's licensee in the operation of Station WTMP, Tampa, Florida. The Commission therefore designated issues to determine whether the licensee engaged in fraudulent billing practices at WTMP and whether it diverted to its own use funds which WTMP had collected in connection with a "Soul Night" contest it promoted.[5] Lexington County contends that Hunt concealed the fact that his wife was a party to his application because of her involvement in the purported misconduct by WOIC's licensee.[6] In addition to being a party to the application, petitioner contends, Mrs. Hunt is also a principal of her husband's proposed station, since she originated the proposal, has been active in implementing it, and is willing to invest in it funds held jointly with her husband, co-sign notes for it, work at the station at a management level without salary,

[3] In mid-1968, when Speidel Broadcasters, Inc., the licensee of Station WTMP(AM), Tampa, Florida, was allegedly engaged in fraudulent billing practices and misuse of monies collected in a contest that station sponsored, Agnes C. Hunt was an officer and director of several standard broadcast stations, including WTMP and WOIC(AM), Columbia, South Carolina, all of whose corporate licenses were owned or controlled by Speidel Broadcasters. Thereafter, control of these stations' licensee corporations was transferred, with Commission approval, to Joe Speidel, III, as an individual. Mrs. Hunt terminated her positions with WTMP when its license was assigned, with Commission approval, in 1972, to a new corporate owner. At present, she holds no other positions with the Speidel stations except for WOIC.

[4] Agnes C. Hunt is a 50% partner in Broadcasting Accounting Service, which performs accounting services for WXRY (FM).

[5] The issues read as follows:

(1) To determine whether standard broadcast Station WTMP, while under the ownership and control of Joe Speidel, III, engaged in fraudulent billing practices;

(2) To determine with respect to the aforenoted period, the facts and circumstances surrounding the Station WTMP promotion, "Soul Night", and the use of the proceeds therefrom.

[6] Lexington County maintains that Agnes C. Hunt was directly involved in the business practices of WTMP and that her involvement is evidenced by copies of correspondence between her and a client of WTMP who was allegedly fraudulently billed by the station. Copies of the correspondence are attached to the petition.

and participate in the formulation of station policy.[7] Lexington County also maintains that the Commission's cross-interest policy would be violated if Hunt's application is granted because Mrs. Hunt would then be chief financial officer of her husband's proposed station, the bookkeeper at WOIC, and, in addition, would have a 50% interest in a bookkeeping service which maintains the books of Station WXRY (FM) in Columbia (see note 4, *supra*).[8]

3. The Broadcast Bureau and Hunt oppose the petition on procedural and substantive grounds. They maintain that Lexington County has not sufficiently supported its allegations that Mrs. Hunt was involved in the purported misconduct at WTWP,[9] that she has any undisclosed interests in her husband's application, or that her bookkeeping service for more than one station in the area gives rise to a cross-interest issue. In addition, the Bureau contends that the issues relating to the acts of misconduct are unwarranted since the misconduct was allegedly committed at another station by a proposed employee who is not a stockholder, officer or director of the applicant. Hunt maintains, furthermore, that the assistance his wife has willingly offered him in pursuance of his application does not raise any hidden interest question, but only demonstrates her fealty to him.

4. In reply, Lexington County contends that Hunt has attempted to quash any inquiry into his wife's involvement in the application, or into her interests in WOIC's renewal application, in order to isolate his application from the taint stemming from the fraudulent practices which have been raised in WOIC's renewal application, and in which Mrs. Hunt apparently participated, since these disclosures would have affected his application. Petitioner also contends that Mrs. Hunt was the impetus behind the application and that her role in "fomenting, formulating and financially undergrading" it was important and of the type normally associated with control and ownership. Finally, petitioner maintains that Mrs. Hunt's interlocking relationship as bookkeeper at her husband's station, as an officer, director, and bookkeeper of WOIC, and as an accountant of WXRY(FM), violates the Commission's cross-interest doctrine since Mrs. Hunt will have access to confidential information which could potentially impair competition among the three stations.

5. The Review Board is of the opinion that Lexington County filed its petition inexcusably late and that no good cause for the untimeliness has been shown. See *RKO General, Inc.* (*WNAC–TV*), — FCC 2d —, 27 RR 2d 1537 (1973); *WIOO, Inc.*, 40 FCC 2d 217, 26 RR 2d 1611 (1973). The allegations are based, for the most part, on facts which have been a matter of Commission record for nearly eight months before the petition was filed. No new or additional facts supporting these issues were revealed by the February 1, 1973, Commission Memorandum Opinion and Order, *supra*, in Docket 19674, and, even assuming that that Order provided information upon which this

[7] Lexington County contends that these facts are borne out by Hunt's own application and by depositions he and his wife gave in September, 1972.

[8] The Board notes that the city of Columbia is located immediately east of Cayce and is within Hunt's proposed service area.

[9] Hunt also opposes addition of the misconduct issue on the basis that investigating the facts surrounding the alleged misconduct in this proceeding would interfere with the conduct of the collateral proceeding in Docket 19674 involving WOIC's renewal application.

petition is based, there is no justification for the delay of over three months after it was released before Lexington County filed its petition. *Cf. Chapman Radio and Television Co.*, 38 FCC 2d 508, 25 RR 2d 1187 (1972). Furthermore, there is no merit to most of petitioner's allegations. We do believe, however, that the petition raises a serious question concerning the possible effect Mrs. Hunt's relationship with three stations in the Columbia-Cayce area may have on competition among those stations. See *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1968). We will consider the issues *seriatim*.

6. On the merits, petitioner's request for the addition of issues relating to Mrs. Hunt's involvement with WOIC and WTMP is deficient. The Commission's February 1, 1973, Memorandum Opinion and Order, *supra*, in Docket 19674, does not "make clear" that Mrs. Hunt participated in the fraudulent practices at issue in the WOIC renewal proceeding, as petitioner contends,[10] and no showing has been made in the instant petition that Mrs. Hunt was involved in either the conduct of the "Soul Night" contest or in the alleged fraudulent billing practices at WTMP. Petitioner's allegations concerning Mrs. Hunt's involvement in the alleged misconduct are based on speculation and surmise, and are therefore procedurally infirm. See Section 1.229(c) of the Commission's Rules. In addition, Mrs. Hunt's role in connection with the Speidel radio stations is explained in affidavits of Mrs. Hunt and Joe Speidel, III, which are attached to Hunt's opposition. According to the affidavits, Mrs. Hunt was named director and, in some cases, an officer of Speidel Broadcasters, Inc. stations, but she was not involved in the daily operations of the stations or in the maintenance of billing records; and, furthermore, she was unable to furnish billing information when it was sought (see note 10, *supra*) only because records had been destroyed in a fire. In view of the foregoing, issues against Hunt in this proceeding are clearly unwarranted. *Cf. Michael D. Haas*, 38 FCC 2d 451, 25 RR 2d 1114 (1972). Likewise, Lexington County's request for a Rule 1.65 issue is without merit. Mrs. Hunt's connections with WOIC have been previously reported.[11] While Hunt failed to list the pendency of WOIC's *renewal* application until an amendment to his application was filed on February 26, 1973, the omission is not serious and does not appear to be of any decisional significance. See *RKO General, Inc.* (*WNAC–TV*), *supra*; *Auburn Publishing Company*, 34 FCC 2d 134, 24 RR 2d 29 (1972). *Cf. Gross Broadcasting Co.* (*KJOG–TV*), —— FCC 2d ——, 27 RR 2d 1543 (1973). Petitioner's request for a real party-in-interest issue is also premised on conjecture and surmise. Specifically, petitioner fails to show that Mrs. Hunt will exercise control over the proposed station[12] merely on the basis of her relationship with her husband, the general nature of the assistance she has given him in preparing

[10] In *WOIC, Inc., supra*, the Commission determined that serious questions had been raised concerning alleged wrongdoings at WTMP, but, regarding Mrs. Hunt's involvement, stated only that, as comptroller of the Speidel Corp., she had responded to an inquiry from James Brown Productions regarding an accounting of the money it spent at the station in 1968 for advertising by replying that "we are unable to supply the information you request from the station's records."

[11] See our April 27, 1973, Memorandum Opinion and Order, *supra*.

[12] "[T]he test for determining whether a third person is a real party in interest is whether that person has an ownership interest, or is or will be in a position to actually or potentially control the operation of the station." *Sumiton Broadcasting Co., Inc.*, 15 FCC 2d 400, 405, 14 RR 2d 1000, 1007 (1968).

the application, her willingness to release her interest in jointly held property in order that her husband may use it in connection with the proposed station, her promise to work at the proposed station without salary, or her promise to co-sign notes. *Cf. Central Westmoreland Broadcasting Co.*, 40 FCC 2d 21, 26 RR 2d 1638 (1973).

7. The Board is of the view, however, that Mrs. Hunt's roles: (a) as bookkeeper for WXRY(FM); (b) as comptroller-treasurer for WOIC; and (c) as bookkeeper for her husband's proposed FM station, raise serious questions as to whether a grant of Hunt's application may violate the Commission's long-standing cross-interest policy. Simply stated, her connections with all three of these stations could potentially impair competition among them and that would certainly not be in the public interest. See *Shenandoah Life Insurance Co.*, 19 RR 1 (1959); *Martin Lake Broadcasting Co.*, 21 FCC 2d 180, 18 RR 2d 245 (1970). See also *K&M Broadcasters, Inc.*, 19 FCC 2d 947, 17 RR 2d 543 (1969). The cross-interest policy emanating from Section 73.240 of the Commission's Rules technically applies only where an applicant has a "meaningful relationship" with a station in the same service and when there is a 1mv/m overlap between these stations. There is no question that there would be 1 mv/m overlap between Hunt's proposed station and WXRY;[13] and although WOIC is a standard broadcast station, and Hunt is applying for an FM station, the public interest considerations underlying the Commission's cross-interest policy appear to be equally applicable. Thus, the potential for the impairment of arms length competition among WOIC, WXRY and Hunt's proposed station presents a substantial question and must be explored in hearing. As Lexington County states in its reply, "with respect to each station, Mrs. Hunt will have access to confidential information including . . . financial records, costs, salaries, customer lists, and rate deals. The potential for abuse . . . need not be belabored." Therefore, an appropriate issue will be added. *Cf. Town Radio, Inc.*, 26 FCC 2d 44 (1970); *Bangor Broadcasting Corp.*, 33 FCC 2d 677, 23 RR 2d 711 (1972).

8. Accordingly, IT IS ORDERED, That the petition to broaden issues, filed May 14, 1973, by Lexington County Broadcasters, Inc., IS GRANTED to the extent indicated below, and IS DENIED in all other respects; and

9. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED to include the following:

To determine whether Agnes C. Hunt's interests as bookkeeper in WXRY(FM) and in her husband's proposed station, as well as in WOIC as its comptroller-treasurer, provide a potential for the impairment of open, arms length competition among broadcast stations serving substantially the same area, contrary to the principles under-

[13] Although there was no showing by Lexington County that a 1 mv/m overlap with WXRY(FM) would result if Hunt's application were granted, the Board is taking official notice that such an overlap would occur and would be substantial. Hunt's application indicates that his proposed site is within the vicinity of the transmitter-antenna site of WXRY(FM). Furthermore, Cayce and Columbia are separated only by the Congaree River and the license files of WXRY and WOIC show that their primary contours now cover Cayce, and Hunt's application shows that his 1 mv/m contour would encompass Columbia. In view of these facts, Lexington County's failure to show 1 mv/m overlap is not fatal. *Cf. Golden West Broadcasters*, 16 FCC 2d 918, 15 RR 2d 938 (1969).

lying the Commission's cross-interest policy, and, if so, the effect thereof on the basic and/or comparative qualifications of William D. Hunt to be a Commission licensee.

10. IT IS FURTHER ORDERED, That the burdens of proceeding with the introduction of evidence and proof under the issue added herein SHALL BE on William D. Hunt.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-868

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of Apparent Liability for Forfeiture to
MIDLAND TELEVISION CORP., SPRINGFIELD, Mo.

AUGUST 16, 1973.

Certified Mail—Return Receipt Requested
MIDLAND TELEVISION CORP.,
Licensee of Station KMTC-TV,
3000 Cherry Street.
Springfield, Mo. 65804

GENTLEMEN: This letter constitutes Notice of Apparent Liability for forfeiture issued pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

During the period from January 31, 1970 through September 30, 1972, KMTC-TV broadcast two programs concerning chinchilla ranching. One of those programs, "National Chinchilla," was presented 23 times, from January 1970 through August 19, 1972, and was furnished through the Jackson Waterbury & Company and Sher & Jones advertising agencies. The other program, entitled "Royal American Chinchilla", was presented on September 23, and 30, 1972, and was furnished through the advertising agency, Galvin, Farris, Ross, Inc. Both programs consumed approximately 30 minutes of broadcast time and were sponsored by business organizations bearing the same corporate titles as the programs' titles. Both companies are engaged in commercially marketing chinchillas and chinchilla breeding and raising systems, and, as stated in the scripts of both challenged programs, the companies are prepared to assist those interested in entering the chinchilla ranching business in arranging financing for the initial purchase of the chinchillas.

Your December 31, 1972, response to the Commission's letter of inquiry disclosed that each of the two programs consumed between 26 and 29 minutes in length and that, after your review of the programs' scripts, you considered the programs to contain eight or nine minutes of commercial matter. The program logs submitted, in fact, disclose that the "Royal American Chinchilla" program was logged as containing eight minutes of commercial matter. The logs also reveal that the program was identified as to type by the designation "Agriculture," but no entries appear identifying the program's source or indicating the times the program began and ended. Because of the Commission's finding that this program constitutes a program-length commercial under the applicable Commission policies, and that therefore all 26 minutes should have been logged commercial, it appears

that you failed to comply with Section 73.670(a)(2)(ii) of the Commission's Rules which requires licensees broadcasting commercial matter to accurately log the amount of time consumed by such commercial matter broadcast. Additionally, because you failed to identify the program's source, it appears that you failed to meet the requirements imposed by Section 73.670(a)(1)(iv). Finally, your failure to designate the program's beginning and ending times on the logs indicates your apparent failure to comply with Section 73.670(a)(1)(ii).

The program "National Chinchilla" raises similar objections. Because the entire program is commercial, Section 73.670(a)(2)(ii) requires that all 29 minutes should have been logged as "commercial matter," instead of the 9 minutes entered on the logs as commercial. In logging this program, you also failed to enter the program's ending times, thus violating Section 73.670(a)(1)(ii) and further failed to properly identify the program's source in violation of Section 73.670(a)(1)(iv).

Although, as noted above, you state that the commercial portion of these programs should have been computed as consuming either eight or nine minutes of commercial matter, the scripts of both programs indicate that in fact the entire program is commercial and the programs' entire duration, therefore, should have been entered as commercial matter. The programs, though sponsored by different companies and somewhat different in content, were so similar that a description of the "Royal American Chinchilla" program should suffice to indicate those elements of the program that transgress the Commission's stated policies pertaining to the broadcast of program-length commercials.[1] The "Royal American Chinchilla" program commences with the program's announcer introducing the chinchilla animals from Nashville, Tennessee, and setting the program's theme as "Good Old Grumpy and His Friends" in "Music City, U.S.A.. . . . Our special guests for this show have never cut any records, but we feel that they can be as entertaining as some of the other performers you have watched on this very screen." The announcer then describes the optimal methods of raising and breeding chinchillas as well as the chinchilla's growth process from the time of inception to the time when the chinchilla is commercially marketable. It is noteworthy that chinchilla ranching is discussed throughout the program, not in terms of a hobby or other pastime, but in terms of a profession or business looking toward the future sale of the animals for profit. The program's announcer discusses the animal in terms of its historical origins, its rarity, and the manner in which the chinchilla was brought to America. Various aspects of the system necessary to breed and raise the chinchilla to prepare it for sale are displayed, and the focus throughout the program is placed upon the value of the chinchilla fur as the source of women's outerwear. A lengthy segment of the program is devoted to a discussion of local chinchilla ranchers' associations and the benefits that devolve upon chinchilla

[1] The Commission today has issued Notices of Apparent Liability to certain licensees based upon their apparent violations of Section 73.670 of the Commission's Rules. Some of those apparent violations attended the broadcast of the other program considered herein, "National Chinchilla", sponsored by National Chinchilla, Inc. See for example, *United Television Co. of New Hampshire*, issued today, for a description of the "National Chinchilla" program.

ranchers by way of membership in those organizations. The program is divided into three relatively distinguishable segments, the first part concluding with a clearly promotional spot announcement by the president of Royal American Chinchilla suggesting that viewers interested in becoming chinchilla ranchers contact the station requesting information about Royal American's products and services. The segment following this first spot announcement ends with the following statement by the program's announcer:

> Every woman no matter what her name has a secret desire to be presented with a precious and priceless chinchilla [coat]. It satisfies her natural weakness for the better things in life and it keeps her among some of the best-dressed women in the world today. Breathtaking beauty, shimmering simplicity, classic style—that's a little of what a woman has on her mind when she is on her way to choose a chinchilla coat and thanks to this vivacious lady from the world of chinchilla fashion designers, she can expect to find all that and much more. The designers, bless their hearts, are actually the brains behind the beauty of every chinchilla creation. They spend long hours day after day designing some of the very finest glamorous fur garments on the market. They scrutinize as many as 150 pelts before blending or perfectly matching a tiny total of 20 pelts to complete a simple stole. So the moral of the whole chinchilla story which you have just seen is that being on a TV show and making your home just minutes from Nashville's music row doesn't necessarily mean you have to be involved in the music industry. Now perhaps this will be money-making music to your ears.

The segment which follows this statement commences with the announcer reiterating statements made during earlier segments of the program about the chinchilla's nature, its environmental preferences, and a statement regarding the growth period after which the chinchilla is ready for sale. The announcer then reintroduces Mr. Don Bishop, Royal American's president, who summarizes what has previously been stated about the chinchilla, the necessary raising and breeding processes, and the company's goals related to the production of quality chinchilla fur. Bishop also relates the company's policies regarding repurchase of chinchillas, the ability of individuals interested in becoming chinchilla ranchers to finance 75% of the initial investment, and the fact that the company will contact interested viewers to provide them with further details about chinchilla ranching. There are also repeated references made by Bishop that ranchers with "quality" animals would have little trouble marketing the chinchilla and impliedly thereby reap a profit on their investments. Although the licensee states that only eight or nine minutes should be considered commercial, it is apparent that the consistent references throughout the program to chinchilla ranching as a potentially profitable business and that the purportedly non-commercial and commercial segments dealt with virtually the same subject matter indicate that this program was entirely commercial and designed to promote the sponsor's products and services. A review of the program's script discloses, furthermore, that no distinction can be drawn between the commercial portion and the so-called non-commercial segment, and that in every instance the non-commercial segment led directly into the commercial promotion for Royal American Chinchilla. When all of the circumstances are considered, it appears that any informational or entertainment aspects the program may contain are wholly incidental to the commercial portion for Royal

American Chinchilla, and that the non-commercial and commercial portions are so interwoven with the promotion of the sponsor that the entire program must be considered a program-length commercial and should have been logged accordingly.[2]

The Commission has considered the circumstances of this case and has determined that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability for forfeiture in the amount of three thousand dollars ($3,000) for willfully or repeatedly failing to observe Sections 73.670(a)(1)(ii), 73.670(a)(1)(iv), and 73.670(a)(2)(ii) of the Commission's Rules for those apparent violations which occurred within one year of the date of the issuance of this Notice of Apparent Liability.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $3,000, made payable to the Treasurer of the United States.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

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[2] The Commission's rulings in the program-length commercial area include the following: *Topper Corporation*, 31 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972) and *WFIL, Inc.*, 38 FCC 2d 411 (1972); Public Notice, "Program-Length Commercials," (FCC 73–215), 39 FCC 2d 1062, 26 RR 2d 1023 (1973); *Taft Broadcasting Co.*, 39 FCC 2d 1070, 26 RR 2d 1025 (1973); *Weigel Broadcasting Co.* (FCC 73–565, May 23, 1973), and *Rush Broadcasting Corp.* (FCC 73–844, August 2, 1973).

F.C.C. 73-869

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request to
MIDLAND TELEVISION CORP., SPRINGFIELD, Mo.
For Statement Concerning Future Policies as to Program-Length Commercials

AUGUST 16, 1973.

MIDLAND TELEVISION CORP.,
Licensee of Station KMTC-TV,
3000 Cherry Street,
Springfield, Mo.

GENTLEMEN: The Commission has on this date issued to you a Notice of Apparent Liability for forfeiture for violation of the Commission's logging Rules in connection with the broadcast of two programs by Station KMTC-TV, sponsored by National Chinchilla, Inc., and Royal American Chinchilla. Those programs, according to the station's program logs, bore titles similar to the sponsor's corporate titles, and you indicated that the programs were broadcast 25 times from January, 1970, through September 30, 1972. The Notice of Apparent Liability was confined to those apparent violations of Section 73.670 of the Commission's Rules which had occurred within a year of the Commission's issuance of the Notice to you on this day.

Programs concerning chinchilla ranching, most notably programs the Commission has determined are primarily designed to commercially promote those firms engaged in marketing chinchilla and chinchilla breeding systems, recently have come to the Commission's attention with increased frequency. On May 23, 1973, the Commission admonished Weigel Broadcasting Company for its broadcast of the "Chinchilla Ranching" program. *Weigel Broadcasting Co.*, FCC 73-565. On August 2, 1973, the Commission admonished Rush Broadcasting Corporation, licensee of WRBT-TV, for its broadcast of the identical program on seven occasions. *Rush Broadcasting Corp.*, FCC 73-844. Today, we have issued Notices of Apparent Liability for forfeiture to five licensees for apparent violations of Section 73.670 of the Commission's Rules incurred in connection with the broadcasts of different programs concerning chinchilla ranching as well as issuing admonishments to six licensees, including yourself, for broadcasting what the Commission deems to be program-length commercials.[1] The

[1] These licensees, in addition to yourself, are: United Television Company of New Hampshire, licensee of station WMUR-TV, Channel 9, Manchester, New Hampshire; Turner Broadcasting of North Carolina, Inc., licensee of station WRET-TV, Channel 36, Charlotte, North Carolina; WXON-TV, Inc., licensee of station WXON-TV, Channel 20, Allen Park, Michigan; and Mid New York Broadcasting Corporation, licensee of station WMTW-TV, Channel 8, Poland Spring, Maine. Additionally, the Commission this day is

common thread running throughout each of the chinchilla ranching programs the Commission has thus far considered, although some of these programs are different, is the conclusive showing that each of these programs represent nothing more than a single continuous commercial promotion for the programs' sponsors and are therefore violative of our policies.

Neither of the chinchilla ranching programs presented by the licensee here were approved by the National Association of Broadcasters Television Code Authority, unlike the chinchilla ranching program considered in *Weigel* and *Rush*, *supra*. The programs here contained elements that cause the same conclusion as reached in those cases, namely that the entire program was designed, produced and presented to promote the products and services of the programs' sponsor since the program so closely wove the purportedly non-commercial and commercial segments that the entire duration of the program broadcast must be considered a program-length commercial.

As mentioned above, the Notice of Apparent Liability issued to you this day is concerned with the apparent violations of the Commission's logging Rules, and although they attended the broadcasts of the programs questioned herein, the apparent violations asserted in the Notice were not premised upon the broadcast of the programs per se. The Commission believes, however, that the broadcast of any program-length commercial, i.e., any program that either weaves the non-commercial and commercial segments so closely, or any program that is entirely commercial because it is designed to promote a sponsor's products or services without regard to the public's interest in programming broadcast by Commission licensees is a serious concern, entirely aside from the apparent violations of the logging Rules which result from the broadcast of such programs.

It was this same concern that caused the Commission to issue the Public Notice, titled "Program-Length Commercials" (FCC 73–215), 39 FCC 2d 1062, 26 RR 2d 1023, sent to all our broadcast licensees on February 22, 1973. In that Public Notice, we stated:

> **Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved . . .**

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issuing a letter admonishing Channel Seventeen, Inc., licensee of station KCBJ–TV, Channel 17, Columbia, Missouri, for apparently violating certain provisions of Section 73.670 of the Commission's Rules and for broadcasting two different chinchilla ranching programs which are program-length commercials. In all, the admonishments and the Notices of Apparent Liability considered in this proceeding involved four different chinchilla ranching programs, to wit: two "National Chinchilla" programs, tagged "NC 7012, Medium: 30:00 TV Program/Revision #9—Final/Approved by NAB 4/17/70," the same program considered in *Weigel* and *Rush, supra*, text, and "VTR–NC 6901–TV–30:00," a non-NAB approved script, both sponsored by National Chinchilla, Inc., and furnished through the Jackson Waterbury & Company and Sher & Jones, Inc. advertising agencies: "Royal American Chinchilla," tagged "30 Minute VTR RAC–0972–1," a non-NAB approved script, sponsored by Royal American Chinchilla, Inc., furnished through the Galvin, Farris, Ross, Inc. advertising agency; and "B & B Chinchilla," sponsored by B & B Chinchilla, Inc., a non-NAB approved script, furnished through the F. Thomas & Associates advertising agency, which included a 14-minute program and two 10-second promotional announcements.

We stated further:

> In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspects of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.
>
> This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

The Commission has found that the questioned program constitutes a program length commercial since the entire broadcast appears to have been presented to promote the products and services of the programs sponsors, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained therein.

Although the broadcasts of the program-length chinchilla commercials on KMTC–TV ceased before the above Notice was issued, you had been put on notice by many Commission rulings of our policies with respect to this subject.[2] Nevertheless, it appears that by broadcasting the identical half-hour presentation 23 times during the above-referenced period, you exhibited a pattern of subordinating programming in the public interest to programming in the interest of salability, and that by broadcasting at least 29 minutes of commercial advertising in a single hour, you disregarded the representation made in your last renewal application that you would normally present no more than 16 minutes of advertising per hour.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement as to your future policies and procedures regarding the broadcast of program-length commercials. Your response, along with all other information relating to your qualifications to remain a licensee, will be considered in connection with your next renewal application.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

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[2] These Commission rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972).

F.C.C. 73-872

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of Apparent Liability For Forfeiture to MID NEW YORK BROADCASTING CORP., POLAND SPRING, MAINE

AUGUST 16, 1973.

Certified Mail—Return Receipt Requested

MID NEW YORK BROADCASTING CORP.,
Licensee of Station WMTW-TV,
Congress Building,
Poland Spring, Maine 04274

GENTLEMEN: This letter constitutes Notice of Apparent Liability for forfeiture, issued pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

From March 25 through October 14, 1972, WMTW-TV broadcast two different programs concerning chinchilla ranching. Approximately 30 minutes in duration, the programs were presented a total of twenty-four (24) times over this period—one program was broadcast eleven times from March 25 through June 24, 1972, the other thirteen times between July 16 and October 14, 1972. Specifically, the latest broadcasts of the latter program occurred on the following dates during 1972: August 20 and 26; September 10, 16, 23 and 30; and October 8 and 14. Remuneration to the station for broadcasting the challenged programs was $190 per broadcast, and both programs were supplied through the Sher & Jones advertising agency. The programs were sponsored by National Chinchilla, Inc., a firm engaged in the raising, breeding and sale of chinchillas. The company also states that it arranges bank financing for parties interested in purchasing chinchillas and provides consultative services to purchasers in establishing systems for the raising and breeding of the animals after purchase.

Your March 9, 1973 response to the Commission's letter of inquiry contained sample program logs of days when the chinchilla ranching program was presented. That response stated that each program contained "three 30-second commercials." You state further that:

> As a result of human error, the name of the advertiser was not transposed to our program logs, nor were the commercial messages for the brochure and their duration properly logged.

An examination of the program logs confirms that no entries were made disclosing the duration of commercial time consumed during the half-hour chinchilla broadcast. Section 73.670(a)(2)(ii) requires that entries be made on the program logs "showing the total duration of commercial matter in each hourly time segment (beginning on the

hour) or the duration of each commercial message (commercial continuity in sponsored programs, or announcements) in each hour." Because you failed to enter any time on the logs as commercial, and because as discussed below the Commission considers the entire program commercial; you apparently violated Section 73.670(a)(2)(ii) of the Commission's Rules. Finally, the logs show that the program's title was listed as "Chinchilla", but no entry was made revealing the sponsor's title, the identity of the person furnishing the program's continuity, or the person who paid for the program's presentation. Your failure to specifically identify the program's sponsor on the logs discloses your apparent violation of Section 73.670(a)(2)(i) of the Rules.

As noted above, the Commission finds that both half-hour chinchilla ranching programs are program-length commercials, and that the programs' broadcast during the referenced period stand in violation of the Commission's policies pertaining to the presentation of program-length commercials. The scripts of the two programs in question disclose that the so-called noncommercial and commercial portions of the program were so closely interwoven that in fact the entire program should have been considered as a commercial message. While reference is made throughout both programs to the chinchilla's history, characteristics and nature, repeated and pervasive emphasis is given to the commercial value of the animal's fur and to requirements for commercially raising the chinchilla. There are, additionally, numerous direct and indirect references to the fact that demand for chinchilla fur exceeds the available supply and that chinchilla ranchers are engaged in a lucrative enterprise. During the first program, broadcast between March 25, 1972 and June 24, 1972, scarcely a sixty-second segment passes without reference to the "ease and success" of chinchilla ranching. A film within the program itself stresses the convenience of converting a part of one's home into a chinchilla-breeding facility. The monetary advantages which accrue to those who raise chinchillas is constantly emphasized. In the second program, broadcast thirteen times between July 16 and October 14, 1972, the script itself clearly identifies as commercial the final eight-minute segment, featuring an interview with Robert Bouckhout, President of National Chinchilla, Inc., of the sponsoring firm. Much of this presentation repeats what had been stated about chinchilla ranching during the purportedly noncommercial segment of the program while asserting that the sponsor employs only those methods that are considered optimal for raising and breeding chinchilla, consistent with the information presented during the initial twenty-minute portion of the program.

While you claim that only three minutes of each program was "commercial matter," an examination of all of the circumstances indicate that each of the programs constituted a continuous advertisement for National Chinchilla, Inc. The focus of the program on the lucrative and facile aspects of chinchilla ranching clearly evidence an intent to induce your viewers to become customers of National Chinchilla, Inc. Moreover, your presentation of one program eleven times, and a second program of the same subject matter thirteen times within a thirty-week period indicates the pattern of subordination of the public interest to salability which the Commission has warned against in pre-

vious program-length commercial cases.[1] When all of the circumstances are considered, it appears that any instructional or entertainment aspects the program may contain are wholly incidental to the commercial promotion of National Chinchilla, Inc., and that the noncommercial portion is so interwoven with the commercial promotion of the company's products and services that the entire program must be considered a program-length commercial and should have been logged accordingly.

The Commission has considered the circumstances of this case and has determined that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability for forfeiture in the amount of eight thousand dollars ($8,000) for willfully or repeatedly failing to observe Sections 73.670(a)(2)(i) and 73.670(a)(2)(ii) of the Commission's Rules on August 20, August 26, September 10, September 16, September 23, September 30, October 8, and October 14 (all 1972). This proceeding is confined to those violations which occurred within one year of the date of the issuance of this Notice of Apparent Liability.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $8,000, made payable to the Treasurer of the United States.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

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[1] The Commission's rulings in the program-length commercial area include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP-TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972) and *WFIL, Inc.*, 38 FCC 2d 411 (1972); Public Notice, "Program-Length Commercials," (FCC 73–215), 39 FCC 2d 1062, 26 RR 2d 1023 (1973); *Taft Broadcasting Co.*, 39 FCC 2d 1070, 26 RR 2d 1025 (1973); *Weigel Broadcasting Co.*, FCC 73–565 (May 23, 1973); *Rush Broadcasting Corp.*, 73–844 (August 2, 1973).

F.C.C. 73-873

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request to
MID NEW YORK BROADCASTING CORP., POLAND SPRING, MAINE
For Statement Concerning Future Policies as to Program-Length Commercials

AUGUST 16, 1973.

MID NEW YORK BROADCASTING CORP.,
Licensee of Station WMTW-TV,
Congress Building,
Poland Spring, Maine 04274

GENTLEMEN: The Commission has on this date issued to you a Notice of Apparent Liability for forfeiture for violation of the Commission's logging Rules in connection with the broadcast of two programs by Station WMTW-TV, sponsored by National Chinchilla, Inc. The programs, according to the station's program logs were entitled "Chinchilla", and you indicate that these programs, approximately thirty (30) minutes in duration, were broadcast 24 times from March 25 through October 14, 1972. The Notice of Apparent Liability was confined to those apparent violations of Section 73.670 of the Commission's Rules which had occurred within a year of the Commission's issuance of the Notice to you on this day.

Programs concerning chinchilla ranching, most notably programs the Commission had determined are primarily designed to commercially promote those firms engaged in marketing chinchilla and chinchilla breeding systems, recently have come to the Commission's attention with increased frequency. On May 23, 1973, the Commission admonished Weigel Broadcasting Company for its broadcast of the "Chinchilla Ranching" program. *Weigel Broadcasting Co.*, FCC 73-565. On August 2, 1973, the Commission admonished Rush Broadcasting Corporation, licensee of WRBT-TV, for its broadcast of the identical program on seven occasions. *Rush Broadcasting Corp.*, FCC 73-844. Today, we have issued Notices of Apparent Liability for forfeiture to five licensees for apparent violations of Section 73.670 of the Commission's Rules incurred in connection with the broadcast of different programs concerning chinchilla ranching as well as issuing admonishments to six licensees, including yourself, for broadcasting what the Commission deems to be program-length commercials.[1] The

[1] These licensees, in addition to yourself, are: United Television Co. of New Hampshire, licensee of station WMUR-TV, Channel 9, Manchester, New Hampshire; Turner Broadcasting of North Carolina, Inc., licensee of station WRET-TV, Channel 36, Charlotte, North Carolina; Midland Television Corporation, licensee of station KMTC-TV, Channel 27, Springfield, Missouri; and WXON-TV, Inc., licensee of station WXON-TV, Channel 20, Allen Park, Michigan. Additionally, the Commission this day is issuing a letter admonishing Channel Seventeen, Inc., licensee of Station KCBJ-TV, Channel 17, Columbia, Missouri, for apparently violating certain provisions of Section 73.670

common thread running throughout each of the chinchilla programs the Commission has thus far considered, although some of these programs are different, is the conclusive showing that each of these programs represents nothing more than a single continuous commercial promotion for the programs' sponsors and are therefore violative of our policies in the program-length commercial area.

The licensee's broadcast of the latest chinchilla ranching program was approved by the National Association of Broadcasters Television Code Authority, as were the chinchilla ranching programs considered in *Weigel* and *Rush*, *supra*, while programs broadcast during the earlier period was not so approved. As in those cases, the programs here contained elements that cause the same conclusion, namely that the entire program was designed, produced and presented to promote the products and services of the program's sponsor since the program so closely wove the purportedly non-commercial and commercial segments that the entire duration of the program broadcast must be considered a program-length commercial.

As mentioned above, the Notice of Apparent Liability issued to you this day is concerned with the apparent violations of the Commission's logging Rules, and although they attended the broadcasts of the programs questioned herein, the apparent violations asserted in the Notice were not premised upon the broadcast of the programs per se. The Commission believes, however, that the broadcast of any program-length commercial, i.e., any program that either weaves the non-commercial and commercial segments so closely, or any program that is entirely commercial because it is designed to promote a sponsor's products or services without regard to the public's interest in programming, is a serious concern, entirely aside from the apparent violations of the logging Rules which resulted from the broadcast of these programs.

It was this same concern that caused the Commission to issue the Public Notice, titled "Program-Length Commercials" (FCC 73-215), 39 FCC 2d 1062, 26 RR 2d 1023, sent to all our broadcast licensees on February 22, 1973. In that Public Notice, we stated:

> Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved . . .

We stated further:

> In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation

of the Commission's Rules and for broadcasting two different chinchilla ranching programs which are program-length commercials. In all, the admonishments and the Notices of Apparent Liability considered in this proceeding involved four different chinchilla ranching programs, to wit: two "National Chinchilla" programs, the programs broadcast by WMTW-TV here, tagged "NC 7012, Medium: 30:00 TV Program/Revision #9—Final/Approved by NAB 4/17/70," the same program considered in *Weigel* and *Rush*, *supra*, text, and "VTR-NC 6901-TV-30:00," a non-NAB approved script, both sponsored by National Chinchilla, Inc. and furnished through the Jackson Waterbury & Company and Sher & Jones, Inc. advertising agencies; "Royal American Chinchilla," tagged "30 Minute VTR RAC-0972-1," a non-NAB approved script, sponsored by Royal American Chinchilla, Inc., furnished through the Galvin, Farris, Ross, Inc., advertising agency; and "B & B Chinchilla," sponsored by B & B Chinchilla, Inc., a non-NAB approved script, furnished through the F. Thomas & Associates advertising agency, which included a 14-minute program and two 10-second promotional announcements.

aspect of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.

This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

The Commission has found that the questioned program constitutes a program-length commercial since the entire broadcast appears to have been presented to promote the products and services of National Chinchilla, Inc., the program's sponsor, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained herein.

Although the broadcasts of the program-length chinchilla commercials ceased before the above Notice was issued, you had been put on notice by many Commission rulings of our policies with respect to this subject.[2] Nevertheless, it appears that by broadcasting the identical half-hour presentation 24 times during the above-referenced period, you exhibited a pattern of subordinating programming in the public interest to programming in the interest of salability, and that by broadcasting at least 29 minutes of commercial advertising in a single hour, each week, you disregarded the representation made in your last renewal application that you would normally present no more than 16 minutes of advertising per hour.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement as to your future policies and procedures regarding the broadcast of program-length commercials. Your response, along with all other information relating to your qualifications to remain a licensee, will be considered in connection with your next license renewal application.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

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[2] These Commission rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972).

F.C.C. 73D–39

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of MONROE COUNTY BROADCASTING CO., INC., ROCHESTER, NEW YORK For Construction Permit	Docket No. 18676 File No. BPH–6397

APPEARANCES

J. Parker Connor and *Eugene F. Mullin, Jr., Esq.*, for Monroe County Broadcasting Company, Inc.; and *Gerald M. Zuckerman, Esq., for the Chief*, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE ISADORE A. HONIG

(Issued June 26, 1973; Effective August 22, 1973 pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. The application of Monroe County Broadcasting Company, Inc. (Monroe) seeks a construction permit for a new FM broadcast station in Rochester, New York, to operate on Channel 280 (103.9 MHz). Orginally the Monroe application was designated for comparative hearing together with three other applications for the same channel by Commission Order (FCC 69–1027) released September 29, 1969. Prior to commencement of the hearing, the application of David H. Polinger, Richard G. Greener and Michael J. Sears, d/b as Rochester Radio Company [1] (Docket No. 18673) was dismissed at this applicant's request by an Order (FCC 70M–807) released June 8, 1970. No consideration for the dismissal was involved, and the dismissal was ordered "with prejudice." On February 16, 1973, after hearing on the three remaining applications had been concluded, What The Bible Says, Inc., an applicant for Henrietta, New York, a suburb of Rochester, moved to dismiss its application with prejudice; no consideration was involved in the proposed dismissal; that motion was granted in an Order (FCC 73M–345) released March 15, 1973. The two remaining applicants, Monroe and Auburn Publishing Company (Auburn), filed a Joint Request on March 26, 1973, for approval of an agreement providing for dismissal with prejudice of Auburn's application for a Rochester station; [2] reimbursement to the dismissing applicant for the expenditures made in the preparation and prosecution of its application, in the amount of $13,000 which is somewhat less than its total

[1] The application of Rochester Radio Company proposed a Rochester station.
[2] A Supplement to the Joint Request was filed by Monroe on April 12, 1973, and a Further Supplement to the Joint Request was filed by Monroe on April 18, 1973.

expenditures, was contemplated by their agreement. By Memorandum Opinion and Order (FCC 73M–567) released May 14, 1973, the agreement between Monroe and Auburn was approved and Auburn's application was dismissed with prejudice.

2. The Commission's Order of designation encompassing the four applications originally involved in this proceeding (FCC 69–1027, released September 29, 1969) specified thirteen hearing issues of which two applied only to applicant Monroe. The Commission, after noting that Monroe's application indicated a cash requirement of $81,789 to be met by $4,000 cash on hand and a $70,000 bank loan plus undocumented revenues, framed an issue inquiring whether Monroe has available from revenues or elsewhere the additional $7,789 required for initial construction and first-year operating costs. In addition, the Commission specified a programming ascertainment issue against Monroe. By Memorandum Opinion and Order (FCC 69R–522) released December 19, 1969, the Review Board enlarged the issues to include an additional issue as to whether the staff proposed by Monroe is adequate to effectuate its programming proposal.

3. On November 17, 1969, Monroe filed a petition to amend its application so as to increase its proposed staff from six to nine persons and to correspondingly increase its estimated first-year operating costs by $25,000. The amendment was accepted (FCC 69M–1663, released December 16, 1969). Consequently, in connection with ruling upon a petition to enlarge issues filed by Auburn on February 12, 1970, the Review Board, on its own motion, revised the financial issue against Monroe to inquire whether this applicant would have available an additional $32,789 in lieu of the $7,789 deficiency originally stated.

4. On March 26, 1973, Monroe filed a further petition to amend its application. The proposed amendment included a change in transmitter site, changes in the transmitter and the antenna, and a concomitant reduction in the down payment for equipment and first-year equipment payments. Also, the amendment provided for some revision in proposed programming which would reduce operating costs. The change in transmitter location would decrease rental expense. However, the amendment reflected additional engineering, legal and miscellaneous expenses totalling $2,000 and a first-year contractual commitment to pay $8,000 to Auburn pursuant to the agreement for dismissal of its application. In its amendment Monroe estimated its revised total cash needs at $82,236 and determined the resulting additional cash requirement (i.e., after credit for the $70,000 bank loan and the $4,000 cash on hand) to be $8,236. The March 26, 1973, amendatory petition of Monroe was granted by an Order (FCC 73M–566) released May 14, 1973.

5. As a result of the dismissal of the three other competing applications in this proceeding and the aforementioned changes made in Monroe's proposal affecting its cash requirements for construction and first-year operating costs as well as for additional expenditures mentioned above, the outstanding hearing issues concerning Monroe's application are as follows:

1. [Originally numbered Issue 3] To determine whether Monroe County Broadcasting Company, Inc. has available to it from revenues or elsewhere the addi-

104–008—73——7

tional $8,236 required to construct and operate the proposed station for one year and thus demonstrate its financial qualifications.

2. [Originally numbered Issue 7] To determine the efforts made by Monroe County Broadcasting Company, Inc. to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

3. [Added to the original issues] To determine whether the staff proposed by Monroe County Broadcasting Company, Inc. is adequate to effectuate its proposed operation.

4. [Originally numbered Issue 13 [3]] To determine, in the light of the evidence adduced to the foregoing issues, whether the above-captioned application should be granted.

6. Prehearing conferences to prepare for hearing on the four applications originally designated in this proceeding were held on November 10 and 20, 1969. Thereafter the application of Rochester Radio Company was dismissed with prejudice at its request by an Order released June 8, 1970. Hearing on the remaining three applications was held on May 26–28, 1970, June 2–4, 1970; a hearing conference to arrange for introduction of evidence on ascertainment of programming needs issues was held on March 9, 1971; a further hearing session was held on June 8, 1971; a second hearing conference was held on September 23, 1971; and a final hearing session on the three applications was held on November 16, 1971, on which date the record was closed. On November 30, 1971, the Broadcast Bureau filed a request for reopening of the record and scheduling of a hearing conference to discuss supplementation of the record with 1970 Census information. The Bureau's request was granted and the record was reopened (FCC 71M–1876, released December 3, 1971). The additional hearing conference was held on December 9, 1971; further hearing was held on January 18, 1971, and the record was again closed on that same date. Proposed findings of fact and conclusions were filed by What The Bible Says, Inc. on April 19, 1972, by Auburn and Monroe on April 20, 1972, and by the Bureau also on April 20, 1972. A reply was filed by the Bureau on May 12, 1972; Auburn filed a reply on May 18, 1972; and Monroe filed a reply to the submissions of Auburn and the Bureau on May 19, 1972.

7. On November 28, 1972, Auburn filed a Request for Official Notice to be Taken of the Review Board's decision in *Erwin O'Connor, tr/as Erwin O'Connor Broadcasting Co.* (FCC 72R–315), released November 7, 1972, 37 FCC 2d 983, with reference to statements of intent from potential advertisers.[4] On March 14, 1973, a motion for dismissal with prejudice of the application of What The Bible Says, Inc. was granted (FCC 73M–345, released March 15, 1973). The application of Auburn Publishing Company was dismissed with prejudice by Memorandum Opinion and Order (FCC 73M–567, released May 14, 1973) which reopened the record and granted a Joint Request of Monroe and Auburn for approval of an agreement providing for the dismissal with reimbursement of expenditures. The application of Monroe was retained in hearing status for the resolution of outstanding qualifications issues.

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[3] Original Issue 13 has been revised in wording in view of the dismissal of the other three applications.

[4] The Request will be granted to the extent that official notice will be taken of the cited Review Board's decision.

8. An amendment to the Monroe application relating to its financial, engineering and staffing proposals was accepted by an Order (FCC 73M–566) released May 14, 1973. Further hearing on the sole remaining application—that of Monroe—was held on May 16, 1973, and the record was reclosed on that date. Supplemental proposed findings of fact and conclusions were filed by Monroe on May 16, 1973, and the Broadcast Bureau filed its comments thereon on May 22, 1973.

9. On June 12, 1973, Auburn filed a Petition for Reconsideration requesting reconsideration of that portion of the Memorandum Opinion and Order released May 14, 1973, which dismissed Auburn's application inasmuch as the Joint Request for approval of the agreement for the dismissal of Auburn's application with reimbursement had requested action on the latter application be held in abeyance until grant of the Monroe application. On June 14, 1973, Monroe filed a Request to Defer Action on Petition for Reconsideration until such time as an initial decision on the Monroe application has been issued.[5]

FINDINGS OF FACT

The Applicant

10. Monroe County Broadcasting Company, Inc. is a corporation organized for the specific purpose of establishing a black-owned and black-operated FM station in Rochester. It has eight stockholders, each with a one-eighth (12.5%) interest; six of them are black residents of Rochester. At the time of filing, all eight stockholders were residents of Rochester, but one has since moved to Atlanta, Georgia. The six black Rochester stockholders all are actively involved in civic activities, especially those identified with the black community. The following individuals comprise the 87.5% ownership of the applicant who are Rochester residents: *Augustus Niles* (real estate business); *Andrew A. Langston* (insurance underwriter); *Mrs. Kathryn Terrell* (beauty parlor operator); *Gordon L. Kelso* (his several business interests include insurance, trucking and wholesale distributing companies); *Roy W. King* (a practicing attorney); *Milton Moss* (real estate business); and *Fred A. German* (employed with Eastman Kodak Company; and minority interest in KLIV, San Jose, California).

Issue 1 (*availability of funds*)

11. Monroe's application as originally filed showed that it would need $81,789 to construct and operate its station for one year. This total was derived from the following cost figures in the applicant's original proposal:

Equipment and Construction:	
Equipment down payment	$14,759
First-year equipment payments	16,530
Other	3,500
Operating Costs:	
First-year operating costs (salaries, rent, other operating costs, bank payments)	47,000
Total	81,789

[5] The two last-mentioned pleadings are being acted upon in this initial decision.

12. Subsequently, Monroe amended its staff proposal to increase the number of salaried employees from six to nine. To provide for the three additional salaries, Monroe increased its estimate of first-year operating costs by $25,000.

13. Monroe also amended its engineering proposal to specify a site on the 30th floor of the Xerox Square Building, the tallest structure in Rochester.[6] The new location is about 2,000 feet northeast of the location initially proposed. Monroe's new proposal meets all of the Commission's technical requirements and will result in no significant change in the area or population covered. Moreover, by placing its antenna on the tallest structure in downtown Rochester, Monroe will be assured of an optimum signal in the area where most of the black population reside.

14. The amended proposal for an antenna mounted on a pole atop Xerox Square will require equipment costing approximately $19,500, about one-third of the original cost proposal. The decrease is attributable primarily to the fact Monroe will no longer need a self-supported tower, or any supporting structure at all other than a pole. Also, because of the height of Xerox Square, Monroe is now able to specify a 1-kilowatt transmitter and 2-bay antenna rather than the more expensive 3-kilowatt transmitter and 3-bay antenna specified originally. Moreover, the proposed equipment supplier, Gates Radio Company, now requires a down payment of only 20%, with the balance payable in four years, whereas previously it required 25% down and the balance in three years. Thus, Monroe's cash requirement for the equipment down payment will now be $3,900 (rather than $14,759, as previously proposed) and its first-year equipment payments, principal and interest, will now total $4,836 (rather than $16,530, as previously proposed). (Monroe Ex. 12, pp. 3–4, 33.)

15. Monroe's amendment also contains a revised estimate of first-year operating costs. The revised estimate is that those costs (salaries, rent, other operating costs, bank payments) will be $60,000 rather than $72,000. This does not represent any decrease in proposed staff; Monroe still proposes a salaried staff of nine. It does reflect, in part, some revision and adjustment in proposed programming, although without any change in those programs through which Monroe intends to respond to the community problems and needs ascertained through its various surveys. It also reflects the reduction in fixed costs, such as rent, that will result from location on Xerox Square. It also reflects the continued study of broadcasting operations by Andrew Langston, Board Chairman of Monroe County Broadcasting Company, Inc. This study includes attendance at a National Association of Broadcasters conference on black broadcasting held in Washington in January 1973, discussion with experienced broadcasters in attendance there, and review of materials distributed there. (Monroe Ex. 12, p. 4.)

16. Monroe's revised figures for cash needed to construct and operate for one year are, therefore, as follows (Monroe Ex. 12, p. 4):

[6] The availability of this new site is made possible by the assistance and cooperation Monroe has received from officials of the Xerox Corporation in Rochester.

Equipment and Construction:	
Equipment down payment	$3,900
First-year equipment payments (principal—$3,900; interest—$936)	4,836
Other	3,500
Additional engineering, legal, and miscellaneous	2,000
Operating costs:	
First-year operating costs (salaries, rent, other operating costs, bank payments)	60,000
Total	74,236

17. In addition to the above-listed cash requirements, Monroe has a contractual commitment under the dismissal agreement to pay Auburn Publishing Company, upon final grant of the Monroe application, the sum of $8,000. This increases the figure for total cash required to $82,236. In its designation Order, the Commission recognized the availability of a bank loan of $70,000 from Security Trust Company, guaranteed by Rochester Business Opportunities Corporation. That commitment has been regularly renewed and is still outstanding (see Order, FCC 72M–796, released June 19, 1972). In the designation Order, the Commission also credited Monroe with cash on hand of $4,000. Deducting the total of $74,000 from the figure for cash needed ($82,236) results in $8,236 as the amount needed from advertising revenues which source is relied upon by Monroe to make up this difference.[7]

18. By Order released February 9, 1970 (FCC 70M–191), the Presiding Judge accepted an amendment to Monroe's application reflecting advertising commitments totalling $38,750 that Monroe's stockholders had obtained from 39 local businesses and organizations. (Monroe Ex. 1, p. 1.) These commitments were each made on the form which was dated, signed by the advertiser and specified a proposed minimum expenditure for the first-year period of the station's operation. However, the form did not indicate the advertising history of the advertiser or whether sufficient funds for the proposed expenditure were available.

19. Following the allowance of the amendment and the initial exchange of hearing exhibits, and as a result of conferences among counsel, and with counsel and the Presiding Judge, Monroe's stockholders were advised by their attorney to return to the 39 advertisers with a new form which would be executed as an affidavit and on which the firm could indicate whether or not it had previously engaged in advertising and whether or not it was doing so at present and which would affirmatively state that it had sufficient funds to spend the specified amount on Monroe's proposed station (Tr. 51, 416–418). The new form (notarized in each instance) stated in part as follows (Monroe Ex. 1):

[7] In their post-hearing submissions, Monroe and the Bureau both arrived at the $8,236 deficiency. However, it appears that Auburn could demand payment of the $3,000 note plus 6% interest thereon due under the dismissal agreement within a year after finalization of a grant to Monroe. This contingency would make an additional amount of $3,180 payable by Monroe prior to the expiration of the first year of operation since station construction requires a minimum period of 30 to 60 days. Thus, Monroe may be faced with the necessity to raise additional cash in the total amount of $11,416.

Date: _____

MONROE COUNTY BROADCASTING CO., INC.,
330 South Avenue
Rochester, N.Y. 14620

Gentlemen:

Yes, we are in accord with your idea of establishing an FM radio station in Rochester with its programming directed toward the inner city community and with ownership of the station predominantly in members of the black community of Rochester.

My firm is anxious to cooperate in making this venture a success, and accordingly we reaffirm our commitment for a minimum expenditure of $_____ for a period of one year following the date of a regular broadcast schedule as provided for in the Federal Communications Commission license permitting you to operate as a standard FM station. This will, of course, cover air time for announcements or advertising at our discretion at rates in effect at the time. You may, if you wish, use this letter as part of your application to the FCC.

My firm will advertise on this station in order to aid the applicant in serving the black community in the City of Rochester.

My firm has sufficient funds to expend the amount of money for advertising which is set forth above.

20. Affidavits from the following Rochester banking institutions reflecting the indicated dollar commitments were placed in the record (Monroe Ex. 1):

Advertiser:	*Amount*
Columbia Banking, Savings & Loan	$1,000
Rochester Savings Bank	1,000
Lincoln Rochester Trust Co	2,500
Marine Midland Trust Co	1,500
Security Trust Co	2,000
Monroe County Savings Bank	1,000
Central Trust Co	1,000
Total	10,000

21. Affidavits showing commitments from the following national companies headquartered in Rochester were also placed in the record (Monroe Ex. 1):

Advertiser:	*Amount*
Xerox Corp	$2,600
Eastman Kodak Co	3,000
Sybron Corp. (formerly Ritter Pfaudler Corp.)	2,000
Total	7,600

22. The record (Monroe Ex. 1) also includes affidavits reflecting additional commitments by seventeen advertisers whose businesses are located in Rochester and whose affidavits state they have previously engaged in advertising, do advertise now, and have funds to meet their commitments. The amounts committed by this group of advertisers range from $2,500 to $150, and total $15,800. Seven black-owned businesses are among the 17 firms in question.

23. Monroe also has additional commitments in affidavit form (Monroe Ex. 1) from fourteen other businesses, twelve of which are black-owned, whose affidavits do not indicate they have previously advertised or do so now. The commitments from this group total $5,650. Finally, Monroe has advertising commitments from six additional Rochester businesses, but not in affidavit form, in the total

amount of $3,350. Five of the six firms are black-owned (Monroe Ex. 1).

24. The summation of applicant's evidence of advertising commitments, either listed or otherwise mentioned above, represents a total of $42,600. Commitments in affidavit form from Rochester banks and national firms headquartered in Rochester alone constitute a total of $17,600. Metropolitan and Prudential Life Insurance Companies have given additional commitments in affidavit form for the total of $750, and Prudential Company has made an additional $250 commitment but not in affidavit form.

25. At the hearing a question was raised as to whether the advertisers would use the services of advertising agencies (Tr. 610, 650–651), presumably on the theory that agencies charge 15% for their services, thereby reducing the station's receipts by an equivalent amount. (See Tr. 609, 662.) The record shows, however, that the small firms from whom Monroe has commitments are black-owned businesses which will receive advertising agency services free of charge through the Rochester Business Opportunities Corporation (Tr. 663). As for the large firms which have existing arrangements with advertising agencies, their commitments total $29,450,[8] so that even if 15% ($4,417.75) were to be deducted from the station's receipts, the effect would be only to reduce the total committed advertising to an amount in excess of $38,000.

26. The advertising commitments in affidavit form furnished to Monroe by Rochester banking institutions and national companies headquartered in Rochester afford ample assurance that Monroe can reasonably rely upon these sources for $17,600 in advertising revenues (less 15% commission). Their sworn statements indicate they have the firm intentions and the financial capabilities to sponsor the effort of the applicant to bring a unique broadcast enterprise to Rochester. To borrow from the financial world, the sworn statements of intent from the banks and prestigious national firms are "blue chip" commitments.[9] Since Monroe requires at most only $11,416 from advertising revenues to satisfy its cash requirements through the first year of operation, the local banks and national companies alone will generate that sum and more—an excess of about $3,500—and thus enable Monroe not only to close the cash requirements gap but also leave a substantial cushion against unforeseen contingencies. Accordingly, it is unnecessary to determine through detailed consideration the degree of reliance which can be placed upon the remaining commitments although it can readily be inferred that they will easily generate a minimum of five to ten thousand dollars of additional revenue. For example, the prestigious Metropolitan and Prudential Insurance Companies

[8] These advertisers are: Park Edge—$1,200; Klonick—$1,200; Schwartz—$1,000; Nothnagle—$2,000; Columbia Banking—$1,000; Rochester Savings—$1,000; First Realty—$1,000; Bravo—$300; Lincoln Rochester—$2,500; Sybron—$2,000; Xerox—$2,600; Rumrill-Hoyt—$500; First Realty—$150; Prudential—$500; Eastman Kodak—$3,000; Marine Midland—$1,500; Security Trust—$2,000; Monroe Co. Savings—$1,000; Central Trust—$1,000; Clinton Merchandising—$2,000; Metropolitan Life—$250; ABF—$500; Altier—$1,000; Prudential—$250.

[9] The sworn advertising statements supplied in the present case by Monroe avoid the strictures raised against unsworn, bare statements of intent voiced by the Review Board in *Erwin O'Connor Broadcasting Co., supra.*

for obvious reasons could be expected not to renege on their assurances given through Monroe to the Commission.

Ascertainment of Needs (*Issue 2*)

27. Monroe stockholders conducted two surveys of community leaders seeking to determine the needs of Rochester as well as nearby communities—one before the release of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants* on February 23, 1971, 27 FCC 2d 650, and one after that event.[10] The initial survey to determine community needs, which was conducted in the period November 1969–February 1970, involved interviews with 85 persons, approximately 35% of them white and 65% black.[11] Subsequent to issuance of the *Primer*, Monroe interviewed 23 more community leaders as well as 21 members of the general public whose names were selected from the Rochester telephone directory by an at-random method.

28. The community leaders (approximately 50 in number) contacted in the Monroe surveys included government officials, professionals, school teachers, clergymen, a representative of the Rochester Chamber of Commerce and businessmen. Monroe also contacted many members of the general public such as laborers, Kodak and Xerox employees, housewives, students, teenagers and small businessmen. All of these individuals were asked to state what they thought were the most pressing needs of their community. Monroe submitted the responses it received as well as its evaluation of those needs. Monroe concludes that the following needs exist: eliminate sub-standard housing and make available housing for lower and middle income groups (10,000 houses); crime prevention; better educational facilities; new recreational facilities; better communication between people in the community; rat control; alleviation of air and water pollution; adequate street lighting; better garbage collection; employment opportunities; better health facilities; lower taxes; better public transportation; and control drug and alcohol abuse (Monroe Exs. 3 and 8).

29. Monroe proposes to meet the needs elicited in its surveys with local news programs (including news programs regarding Rochester's black community); a job locater service program; a program entitled *Ethnic Community Calendar* carrying announcements of local events such as meetings, discussions, social events and church functions; a *Talent Search* program wherein local residents will indicate their availability for employment and their need for housing; and an *Open Forum Opinion Program* presenting a total of three hours each week of discussions addressed to community problems and featuring local individuals who are knowledgeable in matters of local interest (Monroe Ex. 3, pp. 7–10).

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[10] Before Monroe's application was filed, its stockholders undertook a survey in Rochester among both black and other members of the community to ascertain the need for a station directed primarily to the black community. They interviewed 25 persons, among them the Mayor of Rochester, a former mayor, businessmen and bankers, teachers, the Executive Director of the Human Relations Commission, and ordinary citizens. The response to that survey clearly reflected a need for the kind of a station that Monroe proposes (Monroe Ex. 3, pp. 52–56).

[11] The 1970 U.S. Census reported the black population of Rochester as about 50,000 persons, or about 17% of the total population of the community.

Staffing (*Issue 3*)

30. Monroe originally proposed a staff of six full-time employees for 126 hours of weekly programming. But on December 16, 1969, an amendment to Monroe's application increasing the staff to nine full-time salaried employees was accepted (FCC 69M–1663). These employees will occupy the following positions (Monroe Ex. 12, pp. 11–14): (1) a general manager (with third-class license); (2) chief engineer-announcer (with first-class license); (3) program director (with third-class license); (4), (5) and (6) announcer-engineer (each with third-class license); (7) newsman (with third-class license); (8) secretary-receptionist and telephone operator and traffic; and (9) newsman (with third class license).

31. In its March 1973, amendment, Monroe supplied detailed information as to its plans for utilizing them. A tabular work schedule showing the coverage that will be provided at the studio by the nine employees was included in the amendment and also introduced in evidence (Monroe Ex. 12, pp. 14–15).

32. Some of the highlights of this work schedule are the following (Monroe Ex. 12, pp. 15–16):

a. The three principal management-level employees will each have a substantial number of hours available in which it will *not* be necessary for them to be at the studio, thus freeing them for other activities relating to the station. The general manager will have 15 such uncommitted hours, the program director 10, and the chief engineer 18. They may spend these hours in or out of the studio as circumstances dictate. It is anticipated that the chief engineer's uncommitted hours will be partly devoted to maintenance; the general manager's to planning and management duties; and the program director's, to production. Each of them will also have some time available for selling.

b. During normal business hours, from 9:00 a.m. to 5:00 p.m., Monday through Friday, there will be at least three employees at the station in addition to the operator on duty.

c. During the first four hours of operation each day, Sunday through Saturday, there will be at least two employees in the studio, including the operator on duty.

d. Each duty operator (except for the sign-on operator) is scheduled to be in the studio at least one hour before going on duty, thus assuring ample time for briefing by his predecessor.

e. Each of the three announcer-engineers is scheduled for only 39 hours, leaving one hour uncommitted so that he may be directed, as occasion requires, to report shortly before his duty period, or remain for a brief period after it, without incurring the expense of overtime. This flexibility will assure that each sign-on operator will be at the studio a reasonable period before sign-on.

f. The general manager will have no responsibilities as duty operator.[12]

g. Either the general manager or the program director will be at the station from 9:00 a.m. to 4:00 p.m., Monday–Friday.

[12] The Review Board, in specifying a staffing issue (FCC 69R–522), released December 19, 1969, noted that it was then proposed by Monroe that "one employee, the general manager-program director-sales manager will be on duty at the studio for 26 hours each week with 14 hours remaining to devote to his other activities."

h. The "at station" hours of the general manager and program director will overlap at least one hour each day, Monday through Friday, to assure an opportunity for consultation.

i. The "at station" hours of the general manager and chief engineer will overlap at least four hours each week, to assure an opportunity for consultation.

j. The full-time newsman will have only 12 required "at station" hours and will have no responsibilities as duty operator. Thus, he will have 28 uncommitted hours to devote to his news gathering and writing functions and to other station-related activities (Monroe Ex. 12, pp. 15–17).

33. Monroe proposes that the Rochester stockholders devote substantial "commitments of time" to the station's operation. Their activities under such proposal would include "selling, studio supervision, program planning, news gathering and community relations." However, each of these stockholders has personal business commitments of a substantial nature. Thus it would be unrealistic to credit the applicant with significant participation of its stockholders in "studio supervision" and "news gathering." On the other hand, "selling" and "community relations" as well as "program planning" are activities which lend themselves to part-time participation of stockholders. Patently evening hours and short intervals of time spent during the normal working day can be devoted to the last-mentioned aspects of station operation. For the purposes of resolving the staffing issue, it is important to note that Monroe now indicates that the station will not have to rely upon part-time stockholder participation although it will be available (Monroe Ex. 12, p. 12).

34. Monroe originally proposed to devote 33.3% of its time to news programming and another 13% to public affairs programming. In its March 1973, amendment, applicant has reduced its news time to 10% (12 hours and 30 minutes) and its public affairs time to 5% (6 hours and 30 minutes). These changes would leave intact all Monroe's programs it had previously determined to be responsive to the community needs and problems ascertained in its surveys (Monroe Ex. 12, pp. 29–30). However, the reductions in programming time devoted to news and public affairs will decrease the time demands on staff for programming preparation and production and thereby significantly enhance the capability of Monroe to adequately man the station's operations (i.e., production, programming, selling, engineering, bookkeeping, etc.). Stated otherwise, under the revised programming proposal and its detailed work schedule, Monroe will unquestionably be able to deploy its staff of nine persons effectively and thereby effectuate its present service commitment.

FAA Site Approval

35. On March 29, 1973, the Commission received formal notification from the Federal Aviation Administration that the Monroe antenna proposed at the Xerox Square building site would not be a hazard to aviation [13] (Monroe Ex. 13).

[13] At the final hearing session held on May 16, 1973, Bureau counsel stated that the Broadcast Bureau had checked the revised engineering proposal of Monroe and that thereafter the only concern the Bureau had was with regard to FAA site clearance which has now been obtained (Tr. 940).

CONCLUSIONS

The Issues

1. Monroe County Broadcasting Company, Inc. is the sole applicant remaining in this proceeding which originally involved a total of four applicants for a new FM broadcasting station on Channel 280 in the Rochester, New York, area. In order to warrant a grant of its application for a Rochester station which will be programmed to serve particularly, but not exclusively, the needs of the black community, Monroe must be found qualified under the financial, ascertainment of needs and staffing issues.

The Financial Issue

2. It has been found that Monroe will require, under its revised engineering and programming proposals, cash in the amount of $82,236 to meet construction costs, first-year operating expenses, and an initial obligation of $8,000 to reimburse Auburn Publishing Company in connection with dismissal of the latter's application. Additionally, Monroe may be called upon to pay $3,180 more (one installment plus 6% interest) during its first year of operation under the dismissal agreement with Auburn. Thus, Monroe's revised total cash requirements through the first year of operation could be as much as $85,416. Monroe has shown the availability of $70,000 from a bank loan and $4,000 in cash on hand. In the hearing, it proved that it has advertising commitments from Rochester banking institutions and national companies headquartered in Rochester which can reasonably be relied upon to yield, after 15% deduction for agency commissions, first-year revenues of $14,960. Therefore, without regard to other advertising commitments also shown by Monroe, it will be able to raise at least $88,960 in cash to meet its requirements of $85,416. Consequently, it is concluded that Monroe is financially qualified to construct and also operate its proposed station for one year.

The Ascertainment Issue

3. Monroe has conducted ample surveys designed to elicit the opinions of a representative cross section of community leaders and of randomly selected members of the general public as to the needs (problems) of the Rochester community as well as nearby communities. Monroe has evaluated the responses to the survey inquiries and has determined what are the significant community needs. It has also proposed specific programs which are designed to meet the needs expressed by those interviewed. The programs reflect the purpose of Monroe to be responsive to the problems of the black community in Rochester and its environs. It is concluded that Monroe has satisfactorily met its burden on the ascertainment of needs issue.

Summary

4. Monroe has satisfied its burdens under the ascertainment and staffing issues. Moreover, Monroe can now be found to be financially qualified. In this connection, it should be noted that Monroe's reliance on revenues has been decreased. Previously, Monroe required a high percentage of its potential advertisers to meet their commitments and the record did not support concluding they could do so. But it is now relying only on advertisers whose commitments can be given

full credit without a showing of past advertising. Consequently, the favorable conclusion as to Monroe's financial qualification can readily be reached.

5. There are no deficiencies in Monroe's revised engineering proposal and it has FAA approval for its new antenna site. In view of the conclusions stated above as to the qualifications issues outstanding against Monroe, it is concluded that this applicant is qualified in all respects, and that the public interest, convenience and necessity would be served by a grant of its application in this proceeding. It is noteworthy that grant thereof will bring to Rochester a broadcasting service owned and operated by black stockholders (with one exception) and dedicated to serving the needs of the Rochester black community numbering some 50,000 persons.

In view of the foregoing, IT IS ORDERED:

(a) That the aforementioned Request of Auburn for Official Notice, filed on November 28, 1972 (see paragraph 7 of findings, *supra*), IS GRANTED, and official notice IS TAKEN of the cited Review Board's decision;

(b) Auburn's Petition for Reconsideration filed on June 12, 1973 (see paragraph 9 of findings, *supra*) IS DISMISSED AS MOOT since the Monroe application is being granted herein;

(c) Monroe's Request to Defer Action upon the Petition for Reconsideration, filed on June 14, 1973 (see paragraph 9 of findings, *supra*), IS DISMISSED AS MOOT;

(d) That, unless an appeal from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion, in accordance with the provisions of Section 1.276 of the Rules, the application of Monroe County Broadcasting Company, Inc. for a new FM broadcast station in Rochester, New York, to operate on Channel 280 (103.9 MHz) IS GRANTED.

ISADORE A. HONIG,
Administrative Law Judge,
Federal Communications Commission.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
JOHN CERVASE, NEWARK, N.J.
CONCERNING PERSONAL ATTACK RE STATION WNET–TV, NEW YORK, N.Y.

AUGUST 24, 1973.

JOHN CERVASE, Esq.,
423 Ridge Street,
Newark, N.J. 07104

DEAR MR. CERVASE: This will refer to your complaint of May 8, 1973 against WNET–TV, New York, New York, alleging that the licensee failed to comply with the Commission's Rules regarding the broadcast of personal attacks.[1] You allege that on the April 17, 1973 WNET–TV *Black Journal* program, Mr. Adhimu Chunga, while being interviewed in regard to a recent school boycott attacked you by name saying that you were a "political opportunist" which you believe constituted a personal attack and caused "damage to your character and credibility, as a citizen, attorney and candidate." You state that you wrote WNET–TV and requested that it supply you with a script of the program and an opportunity to respond, but such request was rejected by the station on the ground that Mr. Chunga's brief remarks, although concededly unfavorable, were but a mild form of derision and did not constitute a personal attack. You request the Commission to find WNET–TV in violation of the personal attack rule and to direct it to afford you an adequate opportunity to present a response.

We note that in response to a Commission inquiry of May 23, WNET–TV stated that in addition to its belief that the remark in question did not constitute a personal attack, the statements in question were made in the course of a bona fide news interview and as such would be exempt from the personal attack rule under Section 73.679 (b) (3) of the Commission's Rules.

As defined by Section 73.679(a), a personal attack is an attack "made upon the honesty, character, integrity or like personal qualities of an identified person or group." In reviewing personal attack complaints, the Commission's function is not to substitute its own judgment for that of the licensee, but to determine whether the licensee has acted reasonably and in good faith in arriving at its decision as to whether a personal attack has been made. *Sidney Willens and Russell Millin*, 33 FCC 2d 304, (1972).

[1] Pleadings filed are as follows:
1. Complaint filed May 8, 1973.
2. WNET–TV's response of May 23, 1973.
3. Complainant's reply to WNET–TV's response filed June 4, 1973.

104–008—73——8

We are unable to conclude that WNET–TV was unreasonable in its judgment that the "political opportunist" remark by Mr. Chunga did not constitute a personal attack within the meaning of the Commission's Rules and precedent. While the comment may have been a disparaging one, this is not a situation where we feel the Commission would be warranted in overriding the judgment of a licensee. Not every unfavorable reference to an individual constitutes a personal attack. See *Jack Luskin*, 23 FCC 2d 874 (1970); *Mrs. Frank Diez*, 27 FCC 2d 859 (1971).

With respect to WNET–TV's general obligations under the fairness doctrine, it should be noted that fairness only requires the broadcaster to take affirmative steps to afford a reasonable opportunity for presenting contrasting viewpoints on controversial issues of public importance in the station's overall programming. Because it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views, no particular person or group is entitled to appear on the station. In this regard, WNET–TV's May 23 response to Commission inquiry indicates that contrasting viewpoints on the school boycott received considerable coverage in the station's overall programming.

In view of the foregoing conclusion that a personal attack did not occur, it is not necessary for us to reach a determination as to whether the *Black Journal* is entitled to exempt programming status. Therefore, we are unable to conclude that WNET–TV was unreasonable in its judgment that the remark in question did not constitute a personal attack or that the station has otherwise failed to comply with the fairness doctrine. Accordingly, no further Commission action appears to be warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

ARTHUR L. GINSBURG,
Acting Chief,
Complaints and Compliance Division,
for Chief, Broadcast Bureau.

F.C.C. 73-888

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST BY COLUMBIA BROADCASTING SYSTEM, INC. FOR CONTINUED WAIVER OF THE PRIME TIME ACCESS RULE FOR "ONE-TIME" NETWORK NEWS AND PUBLIC AFFAIRS PROGRAMS

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1973; Released August 31, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE DISSENTING; COMMISSIONERS JOHNSON AND REID ABSENT; COMMISSIONER H. REX LEE DISSENTING AND ISSUING A STATEMENT.

1. The Commission here considers a letter request by Columbia Broadcasting System, Inc. (CBS), dated August 16, 1973, asking (inter alia) for continuation of the waiver of the "prime time access rule", Section 73.658(k) of the Commission's Rules, with respect to "one-time" network news and public affairs programs, those not part of a regular series. A waiver of the rule to this effect has been in effect almost since it went into operation October 1, 1971, the last extension being through August 31, 1973. See 32 FCC 2d 55 (FCC 71-1036, October 1971) 37 FCC 2d 570 (FCC 72-906, October 1972), and 40 FCC 2d 355 (FCC 73-359, March 1973). The present CBS request is for continuation of the waiver until the final resolution of this and other matters by a decision in Docket 19622, the overall proceeding concerning the prime time access rule. CBS refers to its earlier submissions (including comments in Docket 19622) as to the reasons which assertedly support the waiver, and also asserts that extension at this time would be in accord with the Commission's general policy of maintaining the *status quo*, with respect to the prime time rule, pending the final decision mentioned.

2. Upon consideration of this matter, we are of the view that extension of the waiver is warranted, essentially in the form urged by CBS. In reaching this conclusion, we are not unmindful of the arguments which have been advanced against this waiver in the past (chiefly by Westinghouse Broadcasting Co., Inc.). Also, in view of the length of time which is likely to elapse before any fundamental change in the rule will become effective (at least until September 1974), it is not necessarily appropriate to maintain the *status quo* in the administration of the rule, in all respects. Nonetheless, the presentation of "special" news and public affairs programs of national significance is a matter of importance, and we do not find, in the material which has been filed in the overall proceeding (Docket 19622) reason to abandon speedily a policy designed to promote the presentation of

such material by the networks, via waiver of the rule. In this case, it appears that the public interest is better served by continuation of the waiver policy, pending the completion of our overall consideration.

3. In view of the foregoing, IT IS ORDERED, That a waiver of Section 73.658(k)(1) of the Commission's Rules, the prime time access rule, IS GRANTED to the American Broadcasting Companies, Inc. (ABC), Columbia Broadcasting System, Inc. (CBS) and National Broadcasting Company, Inc. (NBC) networks, and their owned and affiliated stations in the top 50 markets, to present, without counting toward the permissible three hours of prime time network material, "one-time-only" news and public affairs programs (those not part of a series) through a date 30 days after the release of a decision in Docket 19622 which deals with the subject of network news and public affairs programming.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

Columbia Broadcasting System, Inc. has requested continuation of the waiver of the prime time access rule (Section 73.658(k)) with respect to "one-time" network news and public affairs programs pending the Commission's final decision in Docket No. 19622. While I have voted in favor of previous waiver requests involving such programming, I would have preferred to limit the duration of the waiver here to a date certain in the hope that Docket No. 19622, the Commission's overall inquiry into the effect and operation of the prime time access rule, will be resolved before then. This same approach was taken by the Commission on March 29, 1973 (40 FCC 2d 355), and I find it preferable to the majority's action in permitting continued waiver of the rule through the Docket No. 19622 decision. I specifically reserve judgment on the question of whether there should be a permanent exemption from the rule for "one-time" network news and public affairs programs for consideration in the context of the Docket No. 19622 proceeding.

F.C.C. 73–889

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUESTS BY NBC AND CBS FOR WAIVER OF THE PRIME TIME ACCESS RULE (SECTION 73.658(k)) IN CONNECTION WITH CERTAIN SPORTS EVENTS IN AUGUST AND EARLY SEPTEMBER 1973

MEMORANDUM OPINION AND ORDER

(Adopted August 29, 1973; Released August 30, 1973)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE, H. REX LEE AND HOOKS CONCURRING IN THE RESULT; COMMISSIONERS JOHNSON AND REID ABSENT.

1. The Commission here considers certain requests for waiver of the prime time access rule (Section 73.658(k) of the Commission's Rules) filed by National Broadcasting Company, Inc. (NBC) and Columbia Broadcasting System, Inc. (CBS) in connection with the network presentation of sports events. NBC's request, discussed first below, was filed sometime ago (March 26) as part of a request for a number of sports waivers, all the rest of which have previously been acted on. The CBS request is contained in a letter of August 22, 1973.

2. *The NBC "World Series of Golf" telecast.* NBC's request is of a sort which we have considered many times before, for waiver in case it should be necessary because of "unexpected runover" of sports coverage into prime time (after 7 p.m. E.T.), the waiver being necessary in that event for the stations to carry both the sports telecast to completion and then the regular three evening hours of NBC programs during prime time. The request relates to coverage of the "World Series of Golf" tournament, on Saturday and Sunday, September 8 and 9, 1973. Coverage is planned to end at 6:30 p.m. E.T. on both days; but there is the possibility that playoffs or weather delays, or a combination of both, could cause it to run later, possibly until after 7 p.m.

3. We have granted waivers under these facts in the past; but in the spring of 1973 we had occasion to consider a situation arising in connection with an ABC golf telecast, where the coverage was also scheduled to end at 6:30 E.T., but where a combination of a weather delay and an unexpected playoff (each lasting about a half-hour) caused the tournament and TV coverage to last until after 7:25 (ABC had not sought a waiver in this case). In considering this occurrence (*Requests by ABC and NBC for Waivers*, 40 FCC 2d 996, FCC 73–504 (May 1973)), we indicated that it might be appropriate for the

future to require that in order for waiver to be granted, golf coverage should be scheduled to end by 6 p.m. E.T. in cases where both weather delays and a same-day "sudden death" playoff are possibilities (40 FCC 2d 999).[1]

4. It appears from further information supplied by NBC that while there is a playoff possibility in this case, it is a relatively small one compared to the typical televised golf tournament, in that there are only four players involved in the tournament, and only two on Sunday. Thus, there is less possibility of a tie at the end of regulation play, and resulting playoff, than is the case in the usual tournament where a large number of players are involved on the final day. Since the coverage is scheduled on the basis of ending by 6:30, thus allowing a half-hour leeway, we find that this is a situation where the event "would normally conclude before 7 p.m.", and thus waiver is appropriate under the principle set forth in "Footnote 35" of the May 1970 Report and Order adopting the prime time access rule (see 23 FCC 2d 382, 395).

5. *CBS request in connection with certain pro football exhibition games.* The CBS request relates to three NFL pre-season evening football games, on August 31, September 6 and September 9, 1973, the first two scheduled to start at 9 p.m. E.T. and the third at 8:30 p.m. E.T. CBS plans an hour of additional network programming before the game in the first two cases, and a half-hour in the third. These schedules present no problems in terms of the rule with respect to stations in the Eastern and Central time zones (where the bulk of the "top 50 markets" and their TV homes are located), since the extra network programming occurs outside of prime time (after 11 p.m.). In the Pacific time zone, likewise, there would be a problem only in the case of the first two games, if they run over three hours (i.e., last until after 9 p.m. P.T., followed by an hour of other network material). We have held in a number of cases that it may be assumed that professional football games will be completed in three hours. The real problem is in the Mountain time zone, where the games themselves would run from about 7 to 10 p.m. M.T., and a preceding hour or half-hour of other network material would mean a total of 3½ or 4 hours in an evening.

6. Upon consideration of these matters, it appears that these requests should be granted. We have recognized, in a number of past decisions, the problems which Western stations have, perhaps particularly those in the Mountain time zone, in fitting "live, simultaneous" network programs (sports and other) into their regular schedules. This recognition has included not only the telecasts of events themselves, but other network programming presented the same evening as the sports or other "live, simultaneous" material. See, for example, the decisions concerning the NBC *Miss America* and *Academy Awards* telecasts; e.g., 33 FCC 2d 743 (February 1972); FCC 73–707, 27 R.R. 2d 1463 (June 1973). See also the decision in *KOOL–TV* (Phoenix, Arizona), 36 FCC 2d 677 (August 1972, CBS football game plus an

[1] As noted in the decision cited, this event (the Colonial Open on April 29) followed an ABC golf telecast earlier in 1973, where there was a "runover" of more than an hour into prime time.

additional hour of CBS programming), and *Various Waivers*, FCC 73–707, 27 R.R. 2d 1463 (June 1973), involving inter alia two NBC exhibition football games starting at 9 p.m. E.T. It appears that the same result is indicated here as to the three Mountain time zone markets which are in the top 50 for this year (there will be only two after October 1). However, it should also be pointed out that this subject, like many other aspects of the prime time access rule, is under consideration in Docket 19622, and it may be that the decision in that proceeding, expected to be forthcoming shortly, will adopt a different approach for the future. The Pacific time zone, where the only problem is possible game "runover" beyond three hours on two dates, does not present any aspects warranting discussion.

7. In view of the foregoing, IT IS ORDERED, That:

(a) Stations under common ownership with or affiliated with the National Broadcasting Company (NBC) television network MAY CARRY TO COMPLETION televised coverage of the "World Series of Golf" tournament on September 8 and 9, 1973, without any time counting toward the permissible three hours of network programs on those evenings, provided the coverage is regularly scheduled to conclude by 6:30 p.m. E.T. and

(b) Stations in the Mountain and Pacific time zones, under common ownership with or affiliated with the Columbia Broadcasting System (CBS) television network MAY CARRY, on the evenings of August 31, September 6 and September 9, 1973, the telecast of the professional exhibition football game carried on CBS, plus an hour of additional prime-time CBS programming on August 31 and September 6, and a half-hour of such additional programming on September 9, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-306

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications SOUTHERN BROADCASTING CO. (WGHP-TV), HIGH POINT, N.C. For Renewal of Broadcast License	Docket No. 18906 File No. BRCT-574
FURNITURE CITY TELEVISION CO., INC., HIGH POINT, N.C. For Construction Permit for New Television Broadcast Station	Docket No. 18907 File No. BPCT-4302

MEMORANDUM OPINION AND ORDER

(Adopted August 27, 1973; Released August 28, 1973)

BY THE REVIEW BOARD: BOARD MEMBER NELSON ABSTAINING. BOARD MEMBER KESSLER DISSENTING.

1. Before the Review Board is a petition to modify issues, filed July 20, 1973, by Furniture City Television Company, Inc. (Furniture City), requesting further modification of the Rule 1.65 issue which the Review Board added against Southern Broadcasting Company (Southern) in a Memorandum Opinion and Order, 38 FCC 2d 461, 25 RR 2d 1138, Released December 8, 1972, and modified in a Memorandum Opinion and Order, FCC 73R-214, —— FCC 2d ——, released June 12, 1973.[1]

2. The Review Board added the following Rule 1.65 issue against Southern because of its alleged failure to timely notify the Commission that two of its stockholders were involved in anti-trust suits against the Wachovia Corporation:

To determine whether Southern Broadcasting (WGHP-TV) has complied with the provisions of Section 1.65 of the Commission's Rules by keeping the Commission advised of substantial required changes in its application and, if not, the effect of such non-compliance on the basic and/or comparative qualifications of the applicant to be a broadcast licensee.

3. Subsequently, Southern notified the Commission that a 1.94% stockholder, Kenneth F. Mountcastle, is a director and vice-president of Reynolds Securities, Inc., a New York brokerage firm, and that Reynolds is a party defendant in seven anti-trust suits. Furniture City requested modification of the 1.65 issue against Southern on the grounds that Southern had not disclosed this information in timely fashion, even though it was aware of the pending action against Reynolds. The Board agreed that the matter warranted further explo-

[1] Also before the Board are the following related pleadings: (a) opposition, filed July 26, 1973, by the Broadcast Bureau; (b) opposition, filed July 30, 1973, by Southern; and (c) reply, filed August 7, 1973, by Furniture City.

ration, and modified the 1.65 issue "to encompass the alleged failure of Southern to report the involvement of one of its principals in the Reynolds Securities, Inc. anti-trust suits."

4. In its petition, Furniture City points out that Southern has now informed the Commission that Reynolds is a party defendant, not in seven, but in forty-seven anti-trust suits, and petitioner requests further modification of the 1.65 issues to include consideration of all these actions. According to Furniture City, the fact that a Southern stockholder is also an officer and director, and thus presumably helped direct the affairs of a corporation which is a defendant in an "overwhelming" number of anti-trust suits, is of serious decisional significance and bears directly on Southern's qualifications to remain a Commission licensee.

5. The Review Board agrees with Southern and the Broadcast Bureau that no further modification of this Rule 1.65 issue is necessary. The thrust of the June 12 Order was that the alleged failure to timely report Mountcastle's involvement through Reynolds in anti-trust actions, considered in the context of other alleged violations of the Rule, may be of decisional significance in evaluating Southern's qualifications to be a licensee, and consequently may be explored at the evidentiary hearing. The precise number of suits against Reynolds was not a significant consideration; we intended that the inquiry should be broad enough to encompass all of the alleged failures to timely report antitrust actions against Reynolds.

6. Accordingly, IT IS ORDERED, That the petition to modify issues, filed July 20, 1973, by Furniture City Television Company, Inc. IS GRANTED to the extent indicated herein, and IS DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-866

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of
APPARENT LIABILITY FOR FORFEITURE TO
TURNER BROADCASTING OF NORTH CAROLINA,
CHARLOTTE, N.C.

AUGUST 16, 1973.

Certified Mail—Return Receipt Requested

TURNER BROADCASTING OF NORTH CAROLINA
Licensee of Station WRET-TV,
Post Office Box 12665
Charlotte, N.C. 28205

GENTLEMEN: This letter constitutes Notice of Apparent Liability for forfeiture, issued pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

From August 29 through October 17, 1971, and from June 12 through October 14, 1972, WRET-TV broadcast the same "National Chinchilla" program on eighteen different dates. In your first response to our inquiry, dated December 11, 1972, you indicated that the program was 30 minutes in duration, but in a letter dated February 8, 1973, you revised that estimate to 27 minutes and 30 seconds. The program's sponsor was National Chinchilla, Inc., of Shawnee Mission, Kansas, and the program was distributed through the Sher & Jones advertising agency. For each broadcast of "National Chinchilla" you received fees ranging from $125 to $250, less the agency's fee. During the program the sponsor indicates that it is engaged in breeding and raising chinchillas for sale and provides as one service the arranging of bank financing for parties interested in becoming established in the chinchilla ranching business.

You state in your responses to the Commission's letters of inquiry that the program was not broadcast with specific regulatory or in accordance with any pattern, but that during the period of time the program was presented, the broadcasts occurred approximately one time per month. As noted above, however, the program was presented seven times during the seven week period from August 29 to October 14, 1971, or at the average rate of one time per week. Similarly, during the seventeen week period from June 12 to October 14, 1972, the program was presented eleven times, or approximately one time per week. The sample logs you submitted in accordance with the Commission's request indicate further that the program was identified on one of the program's logs as to "Program, Sponsor and Program Type" as "NATIONAL CHINCHILLA (E) (REC)" and on two other sample logs as "(C) NATIONAL CHINCHILLA (E) (REC)." Although

the same program was broadcast each time, one log shows that the program contained no spot commercial announcements, another shows that one spot commercial announcement was presented, and yet another log discloses that two spot commercial announcements were broadcast. Absent from each of the sample program logs submitted was a statement of the times the programs ended and a statement of the duration of the amount of commercial time consumed during the program, or an indication that any commercial matter was presented. In this regard, you explain that no entries were made identifying any part of the program as commercial since,

> The "National Chinchilla" program was considered by this station to be 27 minutes and 30 seconds commercial material. This insertion was *not* made in the "length" column due to a misunderstanding on the part of our operations personnel. They are not accustomed to having a commercial entry of such length, as most commercial material does not exceed 120 seconds in length, at the maximum. Therefore, they treated the entry as a *program* rather than a 27 minute 30 second *commercial*. This station considers the entry as commercial and would indeed report it as such in any evaluation of its program day. (Emphasis supplied.)

No explanation is made, nor defense given, for failing to enter on the logs the time the program ended or why the program was logged as to type by the designation "E", or "Entertainment." Under these circumstances, therefore, your program logs disclose that you apparently failed to meet the obligations set forth in the following provisions of Section 73.670 of the Commission's Rules each time the program questioned herein was broadcast:

> (1) Section 73.670(a)(2)(ii). Although two of the three "sample" logs submitted indicate that commercial spot announcements were broadcast, no entry appears on those logs indicating the duration of the commercial matter broadcast, as required by Section 73.670(a)(2)(ii) of the Rules. One log shows that no commercial matter was broadcast. Moreover, while you state that you considered the entire 27-minute, 30-second broadcast as commercial, no log entries appear disclosing this fact. The Rule requires that entries be made "showing the total duration of commercial matter in each hourly time segment (beginning on the hour) or the duration of each commercial message (commercial continuity in sponsored programs, or commercial announcements) in each hour." Since you failed to enter either the duration of the commercial matter in the hourly segment the program was broadcast or to enter the duration of the commercial matter within the program's continuity, it appears you failed to comply with the requirements imposed by the Rule. Additionally, because the Commission has found that the program is in fact a program-length commercial, the entire duration of the program should have been logged as commercial matter.
>
> (2) Section 73.670(a)(1)(ii). Because no entries appear on the logs disclosing the times when the program ended, it appears you failed to comply with this section of the Rules, which requires that both the times a program begins and ends be indicated on the logs.

As referenced above, the Commission considers the entire "Chinchilla Ranching" program as commercial matter, a conclusion you have acknowledged in response to the Commission's inquiries. The program's script reveals that whatever entertainment or informational content the program may contain is completely incidental to the commercial promotion of the products and services marketed by the program's sponsor, National Chinchilla, Inc. Because these commercial promotions are so interwoven with the non-commercial segment of the program, the entire program must be considered a program-length commercial and therefore violative of the Commission's policies in this area. While reference is made throughout the program to the

chinchilla's historical origins as well as its characteristics and nature, repeated emphasis is given to the commercial value of the animal's fur and to requirements for raising the chinchilla for marketing purposes. Constant references are made throughout the program, for instance, educating the viewers to "the ease and success" of chinchilla ranching. A film shown during the purportedly non-commercial segment of the program stresses the convenience of converting a part of one's home into a chinchilla-breeding facility. The sales pitch is anything but subtle, as indicated by the following excerpt from the program:

> Chinchillas are gentle, quiet, colorless, odorless, simple to care for and require little space to raise. They provide an excellent activity for both pleasure and profit for the entire family where duties can be shared and enjoyed. This is also true for young couples looking toward the future and for many retired persons with active interest and much available time. Children, especially, love the soft furry little animals and develop a genuine sense of responsibility in caring for them with the family.

The monetary advantages which accrue to those who raise chinchillas is constantly developed as a theme of the program. Besides the film, the program's announcer and a chinchilla rancher engage in dialogue to further embellish the attractiveness of the sponsor's enterprise. At one point, late in the program, the chinchilla rancher responds to a question by the announcer by advising viewers how to "get started." Following a disclaimer by the announcer that the chinchilla ranching business is no "get-rich-quick" scheme, viewers again are advised how to write the station for a special pamphlet. The rancher points out that bank financing is also available, then a final pitch is made for viewers to write for a brochure. An examination of the program challenged herein, indicates that the entire program constituted a continuous commercial advertisement for National Chinchilla, Inc. The focus of the program on the lucrative and facile aspects of chinchilla ranching clearly evidence that the program was designed to induce viewers to become customers of National Chinchilla, Inc. Moreover, your presentation of the same program on eighteen occasions during the periods referenced above indicates the pattern of subordination of programming in the public interest to programming in the interest of salability which the Commission has warned against in its previous program-length commercial rulings.[1] These prior rulings should have forewarned the licensee and station WRET–TV of its obligations in this important area of Commission concern.

The Commission has considered the circumstances of this case and has determined that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability for forfeiture in the amount of four thousand dollars ($4,000)

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[1] The Commission's rulings in the program-length commercial area include: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1970); *NBC*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972) and *WFIL, Inc.*, 38 FCC 2d 411 (1972). See also, *Weigel Broadcasting Co.*, FCC 73–565 (May 23, 1973), where the Commission issued a Notice of Apparent Liability, based on apparent violations of Section 73.670 of the Rules, and admonished Weigel for broadcasting a program-length commercial. The program challenged here and the program challenged in *Weigel* were sponsored by National Chinchilla, Inc., of Shawnee Mission, Kansas. Unlike Weigel, however, the program presented by WRET–TV here was not approved by the National Association of Broadcasters Television Code Authority and in fact was different in some aspects except for the fact that the program was a program-length commercial.

for willfully or repeatedly failing to observe Sections 73.670 (a) (1) (ii), and 73.670 (a) (2) (ii) of the Commission's Rules on those dates during August, September and October, 1972, when station WRET-TV broadcast the "National Chinchilla" program. This proceeding is confined to those violations of Section 73.670 of the Commission's Rules which occurred within one year of the date of the issuance of this Notice of Apparent Liability.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $4,000, made payable to the Treasurer of the United States.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioners Johnson, Wiley and Hooks absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-867

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request to
TURNER BROADCASTING OF NORTH CAROLINA,
CHARLOTTE, N.C.
For Statement Concerning Future Policies as to Program-Length Commercials

AUGUST 16, 1973.

TURNER BROADCASTING OF NORTH CAROLINA,
Licensee of Station WRET-TV,
Post Office Box 12665,
Charlotte, N.C. 28205

GENTLEMEN: The Commission has on this date issued to you a Notice of Apparent Liability for forfeiture for violation of the Commission's logging Rules in connection with the broadcast of a program by Station WRET-TV, sponsored by National Chinchilla, Inc. That program, according to the station's program logs was entitled "National Chinchilla" and you indicated that this same program was broadcast eighteen times over a two-year period.

The Notice of Apparent Liability was confined to those apparent violations of Section 73.670 of the Commission's Rules which had occurred within a year of the Commission's issuance of the Notice to you on this day.

Programs concerning chinchilla ranching, most notably programs the Commission has determined are primarily designed to commercially promote those firms engaged in marketing chinchillas and chinchilla breeding systems, recently have come to the Commission's attention with increased frequency. On May 23, 1973, the Commission admonished Weigel Broadcasting Company for its broadcast of the "Chinchilla Ranching" program. *Weigel Broadcasting Co.*, FCC 73-565. On August 2, 1973, the Commission admonished Rush Broadcasting Corporation, licensee of WRBT-TV, for its broadcast of the identical program on seven occasions. *Rush Broadcasting Corp.*, FCC 73-844. Today, we have issued Notices of Apparent Liability for forfeiture to five licensees for apparent violations of Section 73.670 of the Commission's Rules incurred in connection with the broadcast of different programs concerning chinchilla ranching as well as issuing admonishments to six licensees, including yourself, for broadcasting what the Commission deems to be program-length commercials.[1]

[1] These licensees, in addition to yourself are: United Television Co. of New Hampshire, licensee of station WMUR-TV, Channel 9, Manchester, New Hampshire; Midland Television Corporation, licensee of station KMTC-TV, Channel 27, Springfield, Missouri; WXON-TV, Inc., licensee of station WXON-TV, Channel 20, Allen Park, Michigan; and Mid New York Broadcasting Corporation, licensee of station WMTW-TV, Channel 8, Poland Spring, Maine. Additionally, the Commission this day is issuing a letter admonishing Channel Seventeen, Inc., licensee of Station KCBJ-TV, Channel 17, Columbia, Missouri, for apparently violating certain provisions of Section 73.670 of the Commission's Rules

The common thread running throughout each of the chinchilla ranching programs the Commission has thus far considered, although some of these programs are different, is the conclusive showing that each of these programs represents nothing more than a single continuous commercial promotion for the programs' sponsors and are therefore violative of our policies in the program-length commercial area.

The licensee's broadcast of this particular chinchilla ranching program was not approved by the National Association of Broadcasters Television Code Authority, unlike the chinchilla ranching program considered in *Weigel* and *Rush*, *supra*. The program here contained elements that cause the same conclusion reached in those cases, namely that the entire program was designed, produced and presented to promote the products and services of the program's sponsor since the program so closely interweaves the purportedly non-commercial and commercial segments that the program in its entirety must be considered a program-length commercial.

As mentioned above, the Notice of Apparent Liability issued to you this day is concerned with the apparent violations of the Commission's logging Rules, and although they attended the broadcasts of the programs questioned herein, the apparent violations asserted in the Notice were not premised upon the broadcast of the programs per se. The Commission believes, however, that the broadcast of any program-length commercial, i.e., any program that either interweaves the non-commercial and commercial segments so closely, or any program that is entirely commercial because it is designed to promote a sponsor's products or services without regard to the public's interest in programming broadcast by Commission licensees is a serious concern, entirely aside from the apparent violations of the logging Rules which resulted from the broadcast of such programs.

It was this same concern that caused the Commission to issue the Public Notice, titled "Program-Length Commercials" (FCC 73–215), 39 FCC 2d 1062, 26 RR 2d 1023, sent to all our broadcast licensees on February 22, 1973. In that Public Notice, we stated:

> Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved . . .

We stated further:

> In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspect of the cases. However, the Commission continues to receive evidence that

and for broadcasting two different chinchilla ranching programs which are program-length commercials. In all, the admonishments and the Notices of Apparent Liability considered in this proceeding involved four different chinchilla ranching programs, to wit: two "National Chinchilla" programs, tagged "NC 7012, Medium: 30:00 TV Program/Revision #9—Final/Approved by NAB 4/17/70," the same program considered in *Weigel* and *Rush*, *supra*, text, and "VTR–NC 6901–TV–30:00," a non-NAB approved script, both sponsored by National Chinchilla, Inc., and furnished through the Jackson Waterbury & Company and Sher & Jones, Inc. advertising agencies; "Royal American Chinchilla," tagged "30 Minute VTR RAC–0972–1," a non-NAB approved script, sponsored by Royal American Chinchilla, Inc., furnished through the Galvin, Farris, Ross, Inc. advertising agency; and "B & B Chinchilla," sponsored by B & B Chinchilla, Inc., a non-NAB approved script, furnished through the F. Thomas & Associates advertising agency, which included a 14-minute program and two 10-second promotional announcements.

some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.

This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

The Commission has found that the questioned program constitutes a program-length commercial since the entire broadcast appears to have been presented to promote the products and services of National Chinchilla, Inc., the program's sponsor, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained therein.

Although the broadcasts of the program-length chinchilla commercials on WRET–TV ceased before the above Notice was issued, you had been put on notice by many Commission rulings of our policies with respect to this subject.[2] Nevertheless, it appears that by broadcasting the identical half-hour presentation 18 times during the above-referenced period, you exhibited a pattern of subordinating programming in the public interest to programming in the interest of salability, and that by broadcasting at least 29 minutes of commercial advertising in a single hour, you disregarded the representation made in your last renewal application that you would normally present no more than 16 minutes of advertising per hour.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement as to your future policies and procedures regarding the broadcast of program-length commercials. Your response, along with all other information relating to your qualifications to remain a licensee, will be considered in connection with your next license renewal application.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

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[2] The Commission's rulings include the following: ***Topper Corporation***, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972).

F.C.C. 73–760

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of TWIN COUNTY TRANS-VIDEO, INC., ALLENTOWN AND BETHLEHEM, PA. For Construction Permits in the Cable Television Relay Service	CPCAR–423, 424, 425

MEMORANDUM OPINION AND ORDER

(Adopted July 18, 1973; Released July 19, 1973)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER REID CONCURRING IN THE RESULT.

1. The captioned applications, filed by Twin County Trans-Video, involve a one channel, three hop microwave communications facility applied for in the Cable Television Relay Service (Part 78 of the Commission's Rules). The three stations would be used by Twin County to relay cablecast programming from the New York City area to Twin County cable television systems in Allentown and Bethlehem, Pennsylvania and surrounding communities. The programming involved would consist primarily of sports programming supplied by the Long Island (Nassau) Coliseum at Uniondale, New York but would also include other cablecast programming including some supplied by the TelePrompTer cable television system in New York City. The application has been reviewed and it appears that Twin County is an eligible applicant, that the application is technically in order, and that the relay of cablecast programming of this type in the cable television relay service is permitted by the rules. A petition to deny, however, has been filed by Riko Enterprises, Inc., d/b/a the Philadelphia 76ers.

2. Petitioner indicates that the Philadelphia 76ers are a professional basketball team and a member of the National Basketball Association, that they play home games in the Spectrum in Philadelphia and at the Hershey Arena in Hershey, Pennsylvania, and that they consider the Twin County cable television systems in Allentown and Bethlehem to be within their home territory. The 76ers Petition to Deny is brief and after making reference to certain legislation proposed in the 92nd Congress concerning black-outs of sports events,[1] Judge Grim's 1953 decision,[2] and the possible merger of the American and National Basketball Associations concludes as follows:

[1] S. 2373, S. 4007, and S. 4010.
[2] *United States v. National Football League*, 116 F. Supp. 319 (1953).

104–008—73——9

As inter-related as are all questions of sports and cable, the Commission should deny this grant until the resolution in Congress and the Commission is completed. Carriage of the games of the Nets may run contrary to final Commission or Congressional policy and the Commission may be forced to attempt a rollback in service at some date in the future.

3. After obtaining a number of time extensions in which to reply to this petition, for the purpose of the parties attempting to resolve their differences, Twin County on February 23, 1973, amended its application stating that games of the New York Nets basketball team would not be carried to its cable television systems without thirty days prior notice to the Commission and counsel for the 76ers.

4. The point of the 76ers' petition appears to be that if the American and National Backetball leagues are merged, the new merged league will be free to adopt a policy prohibiting telecasts of all Nets games in 76ers' home territory for the purpose of protecting the 76ers' television revenues. Because this possibility exists and could eventually prevent cable television carriage of Nets games in Allentown and Bethlehem, denial of these applications is urged. No other relationship between the proposed legislation and these applications is apparent.

5. We are unable to agree with the 76ers that these considerations provide grounds for denial of the requested authorizations. Initially, it does not appear that the Commission is the proper forum for the resolution of what appears to be an essentially private controversy between the 76ers and the Nets as to where particular basketball games should be telecast nor that the proper remedy to resolve this controversy is the denial of microwave authorizations to Twin County. If a league agreement were in the future to prohibit carriage of the Nets games by Twin County, such carriage would presumably be discontinued by the Nets themselves. If they did not, the proper forum for a resolution of the controversy would be the appropriate court or whatever other enforcement mechanism the league agreement established. The same would appear to be the case if it should come about that there were statutory restrictions on carriage of the Nets games. Although the 76ers suggest that there may be some problem in the future with "rolling back" this service, we do not anticipate that this would be a problem for the Commission. It would be highly unlikely that the entire flow of programs would terminate, so that the loss of a particular event would be more akin to a change in the schedule of a local broadcast station than the deletion of an entire channel of programming of the type the Commission has taken some pains to avoid in the past. Additionally, the petition is speculative in the extreme and must be rejected for that reason.[3] In order for the situation posited by the 76ers to come about, not only must the leagues merge, but there would have to be a finding by the new league that such an agreement would not violate the antitrust laws, and the league would actually have to adopt such an agreement.

Unsupported speculation of this type does not provide adequate grounds for the action requested. Finally, the 76ers' petition makes no

[3] No affidavit as to the facts involved accompanied the petition. See Section 309(d)(1) of the Communications Act and Section 78.22(a) of the Commission's Rules.

suggestion that denial of these applications would in any way serve the public, protect the continued supply of television programming to the viewing public in the area, tend to assure the continued health of local television broadcast service, or in any other way serve to further the interests assigned to Commission protection by the Communications Act. Having fully examined the petition we find no grounds for taking the action requested and will accordingly deny the petition to deny.

6. We note also the applicant's statement that Nets games will not be carried without thirty days advance notice to the 76ers and the Commission. We have not relied on this statement, for to do so might suggest that the matters raised are, in this context, a proper concern of the Commission.[4] In light of the above discussion we see no need for such notice and we will not require it. We do not conceive this to be the proper forum for the resolution of this controversy.

7. It appearing that no further substantial question concerning the subject applications remains, that Twin County Trans-Video, Inc., is a qualified and eligible applicant, and that the public interest will be served by authorization of the facilities applied for, we will grant the requested authorizations.

Accordingly, IT IS ORDERED, That the "Petition to Deny" filed October 16, 1972 by Riko Enterprises, Inc., IS DENIED.

IT IS FURTHER ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, and Part 78 of the Commission's Rules and Regulations, that the above-captioned applications ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[4] This should not, of course, suggest that when properly related to the public interest and to the limits of the Commission's jurisdiction under the Communications Act, particular aspects of broadcast and cable television sports carriage are not of concern to the Commission. Our proceeding in Docket 19417 (36 FCC 2d 641 (1972)), for example, reflects such a concern and policies developed in that proceedings would apply to these cable television systems. The matter before us now, however, is not such a case.

F.C.C. 73-864

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of
APPARENT LIABILITY FOR FORFEITURE TO
UNITED TELEVISION COMPANY OF NEW HAMPSHIRE

AUGUST 16, 1973.

Certified Mail—Return Receipt Requested

UNITED TELEVISION COMPANY OF NEW HAMPSHIRE,
Licensee of Station WMUR-TV,
Suite 104,
2501 Calvert Street NW.,
Washington, D.C. 20008

GENTLEMEN: This letter constitutes Notice of Apparent Liability for forfeiture, issued pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

From March 29, 1972 through October 15, 1972, WMUR-TV broadcast a program entitled "National Chinchilla, Inc." The same program, approximately 29 minutes in length, was presented 27 times almost weekly during this period and was sponsored by a firm doing business as National Chinchilla, Inc. Located in Shawnee Mission, Kansas, National Chinchilla, Inc., characterizes its business operation as a national "wholesale chinchilla distributor" which sells chinchillas exclusively through authorized dealers to individuals established in the chinchilla ranching business and to individuals who are interested in becoming full or part-time chinchilla ranchers. The company states that it also arranges bank financing for parties interested in purchasing chinchillas and assists them in establishing the proper environment in which marketable chinchillas can be bred and raised after purchase.

Your response to the Commission's letter of inquiry, dated January 3, 1973, disclosed that the direct source of the program's continuity was the Sher and Jones, Inc. agency of Kansas City, Missouri, and that compensation to the station for the broadcast of this commercially sponsored program was based upon the rates stated in the station's rate card less the advertising agency commission of 15%. In accordance with the Commission's request in its letter of inquiry, you submitted facsimiles of five "sample" program logs which you assert are intended to illustrate the log entries made for "National Chinchilla" at the time of each broadcast involved. You additionally note that during the months of August, September and October, 1972, the program questioned herein was presented by WMUR-TV three times per month, although you fail to identify the specific dates of the

program's broadcast. The "sample" logs you have submitted, which include logs for September 24 and October 15, 1972, indicate that the questioned program was entered on the logs as "LC" and "E". In your January 3, 1973 response, you explain these denotations:

> The program was logged as National Chinchilla, as Talk or Entertainment or both, as a local commercial program (it appears that this entry should have been recorded commercial). The log indicates that the program is entirely commercial. In our view the actual commercial content, while not listed on the log, would be approximately 3 minutes, consisting principally of the actual advertisement made within the program . . .

By letter dated March 30, 1973, however, you attempt to revise the assertion quoted above, as follows:

> Specifically, the sentence . . . was not meant to convey any impression that we considered the 30 minute program to consist of 30 minutes of commercial matter (as noted in the sentence which followed the above sentence, we had calculated a total of 3 minutes of commercial messages contained within the entire 30 minutes time segment). The reference to the program as "entirely commercial" was meant only to distinguish between a program segment entirely commercially sponsored as opposed to a segment carried on a sustaining basis or with "spot advertisements separately sold." We approached this program in the same basic way in which we would treat a network program which included commercial messages.

You further acknowledge in your March response that following a recent study of the Commission's Public Notice, "Program-Length Commercials", 39 FCC 2d 1062 (1973), "our past logging of the Chinchilla Program was inconsistent with the policy stated in the Commission's Notice but we respectfully submit that our past judgments were made in good faith. . ."

In addition to the log entries identifying the program's source of "local commercial" (in your terms symbolized by the letters "LC") and the program's type as "entertainment," the logs disclose no entry indicating that any commercial matter was broadcast or the duration of such commercial matter. Based on these disclosures, therefore, it appears that you have failed to comply with the requirements set forth in the following Sections of the Commission's Rules:

> (1) Section 73.670(a)(2)(ii). No entry appears indicating that any commercial matter was broadcast. You acknowledge that at least three minutes of the questioned program was commercial, but failed to make an appropriate entry disclosing this fact. Moreover, because of the Commission's finding that the entire program was in fact a program-length commercial, a point discussed more fully below, the entire 29 minutes should have been entered on the logs as commercial matter. Thus, your failure to log the entire program as commercial, or even to log the three-minute segment you aknowledge constituted commercial matter, indicates violations of Section 73.670(a)(2)(ii), which requires that an entry be made "showing the total duration of commercial matter in each hourly time segment (beginning on the hour) or the duration of each commercial message (commercial continuity in sponsored programs, or commercial announcements) in each hour."
>
> (2) Section 73.670(a)(1)(iv). The logs disclose that you entered the entire program as "local." The program presented here, however, was produced without any local participation whatsoever, and was recorded on videotape. Note 2 to Section 73.670(a)(1)(iv) explicitly states that a local program for purposes of the program source definitions is one "originated or produced by the station, or for the production of which the station is substantially responsible, and employing live talent more than 50 percent of the time . . . [p]rograms primarily featuring syndicated or feature films or other nonlocally recorded programs shall be classified as 'recorded' (REC) even though a station personality appears in connection with such material." Note 2 further states that any taped program

shall be identified on the logs as to source by the symbols "REC". Since the program was not produced locally, employed no live talent and was taped, it appears that you improperly designated the program as local on the logs in apparent violation of Section 73.670(a)(1)(iv).

Although, as noted above, you state that the commercial portion of the program should have been computed as three minutes in duration and so entered on the program log, the script of the program indicates that in fact the entire program is commercial and all 29 minutes should have been entered on the logs as commercial matter. The program's script reveals that the purportedly noncommercial and commercial segments were so closely related and interwoven that the program in its entirety appears designed to promote the products and services marketed by National Chinchilla, Inc., and is, therefore, a program-length commercial. While reference is made throughout the program to the chinchilla's history, characteristics and nature, repeated emphasis is given to the commercial value of the animal's fur and to requirements for raising the chinchilla for marketing purposes. Constant references are made throughout the program, for instance, educating the viewers to "the ease and success" of chinchilla ranching. A film shown during the purportedly non-commercial segment of the program stresses the convenience of converting a part of one's home into a chinchilla-breeding facility. The sales pitch is anything but subtle as indicated by the following excerpt from the program:

> Chinchillas are gentle, quiet, odorless, simple to care for and require little space to raise. They provide an excellent activity for both pleasure and profit for the entire family where duties can be shared and enjoyed. This is also true for young couples looking toward the future and for many retired persons with active interest and much available time. Children, especially, love the soft furry little animals and develop a genuine sense of responsibility in caring for them with the family.

The monetary advantages which accrue to those who raise chinchillas is constantly emphasized. Besides the film, the program's announcer and a chinchilla rancher engage in dialogue to further embellish the sponsor's enterprise. At one point, late in the program, the chinchilla rancher responds to a question by the announcer by advising viewers how to "get started." Following a disclaimer by the announcer that the chinchilla ranching business is no "get-rich-quick scheme," viewers again are advised how to write the station for a special pamphlet. The rancher points out that bank financing is also available, then a final pitch for viewers to write for a brochure.

While you initially considered only three minutes of the program to be "commercial" (which three minutes you do not state), an examination of all of the circumstances indicates that the entire program constituted an advertisement for National Chinchilla, Inc. The focus of the program on the lucrative and facile aspects of chinchilla ranching clearly evidence that the program was designed to induce viewers to become customers of National Chinchilla, Inc. Moreover, your presentation of the *same* program twenty-seven times in less than seven months indicates the pattern of subordination of programming in the public interest to programming in the interest of salability which the Commission has warned against in its previous program length com-

mercial rulings.[1] When all of the circumstances are considered, it appears that any informational or entertainment aspects the program may contain are wholly incidental to the commercial promotion of National Chinchilla, Inc., and that the non-commercial and commercial portions are so interwoven with the promotion of the company's services that the entire program must be considered a program-length commercial and should have been logged as such.

The Commission has considered the circumstances of this case and has determined that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability for forfeiture in the amount of six thousand dollars ($6,000) for willfully or repeatedly failing to observe Sections 73.670(a)(1)(iv) and 73.670(a)(2)(ii) of the Commission's Rules on those dates during August, September, and October, 1972, when "National Chinchilla" was broadcast. This proceeding is confined to those violations which occurred within one year of the date of the issuance of the Notice of Apparent Liability.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $6,000 made payable to the Treasurer of the United States.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty day period ordering that you pay the forfeiture in full.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

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[1] The Commission's rulings in the program-length commercial area include: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *NBC*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972) and *WFIL, Inc.*, 38 FCC 2d 411 (1972). See also, *Weigel Broadcasting Co.*, FCC 73–565 (May 23, 1973), where the Commission issued a Notice of Apparent Liability, based on apparent violations of Section 73.670 of the Rules, and admonished Weigel for broadcasting a program-length commercial. The program challenged here and the program challenged in *Weigel* were sponsored by National Chinchilla, Inc., of Shawnee Mission, Kansas. Unlike *Weigel*, however, the program presented by WMUR–TV here was not approved by the National Association of Broadcasters Television Code Authority and in fact was different in some respects except for the fact that the program was a program-length commercial.

F.C.C. 73–865

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request to UNITED TELEVISION COMPANY OF NEW HAMPSHIRE For Statement Concerning Future Policies as to Program-Length Commercials	

AUGUST 16, 1973.

UNITED TELEVISION COMPANY OF NEW HAMPSHIRE,
Licensee of Station WMUR–TV,
Suite 104,
2501 Calvert Street NW.,
Washington, D.C. 20008

GENTLEMEN: The Commission has on this date issued to you a Notice of Apparent Liability for forfeiture for violation of the Commission's logging rules in connection with the broadcast of a program by Station WMUR–TV, sponsored by National Chinchilla, Inc. That program, according to the station's program logs was entitled "National Chinchilla, Inc.," and you indicated that this same program was broadcast twenty-seven times from March 29 through October 15, 1972. The Notice of Apparent Liability was confined to those apparent violations of Section 73.670 of the Commission's Rules which had occurred within a year of the Commission's issuance of the Notice to you on this day.

Programs concerning chinchilla ranching, most notably programs the Commission has determined are primarily designed to commercially promote those firms engaged in marketing chinchilla and chinchilla breeding systems, recently have come to the Commission's attention with increased frequency. On May 23, 1973, the Commission admonished Weigel Broadcasting Company for its broadcast of the "Chinchilla Ranching" program. *Weigel Broadcasting Co.*, FCC 73–565. On August 2, 1973, the Commission admonished Rush Broadcasting Corporation, licensee of WRBT–TV, for its broadcast of the identical program on seven occasions. *Rush Broadcasting Corp.*, FCC 73–844. Today, we have issued Notices of Apparent Liability for forfeiture to five licensees for apparent violations of Section 73.670 of the Commission's Rules incurred in connection with the broadcast of different programs concerning chinchilla ranching as well as issuing

admonishments to six licensees, including yourself, for broadcasting what the Commission deems to be program-length commercials.[1]

The common thread running throughout each of the chinchilla ranching programs the Commission has thus far considered, although some of these programs are different, is the conclusive showing that each of these programs represents nothing more than a single continuous commercial promotion for the programs' sponsors and are therefore violative of our policies in the program-length commercial area.

The licensee's broadcast of this particular chinchilla ranching program was not approved by the National Association of Broadcasters Television Code Authority, unlike the chinchilla ranching program considered in *Weigel* and *Rush*, *supra*. The program here contained elements that cause the same conclusion as reached in those cases, namely, that the entire program was designed, produced and presented to promote the products and services of the program's sponsor since the program so closely wove the purportedly non-commercial and commercial segments that the entire duration of the program broadcast must be considered a program-length commercial.

As mentioned above, the Notice of Apparent Liability issued to you this day is concerned with the apparent violations of the Commission's logging Rules, and although they attended the broadcasts of the program questioned herein, the apparent violations asserted in the Notice were not premised upon the broadcast of the program per se. The Commission believes, however, that the broadcast of any program-length commercial, i.e., any program that either weaves the non-commercial and commercial segments so closely, or any program that is entirely commercial because it is designed to promote a sponsor's products or services without regard to the public's interest in programming broadcast by Commission licensees, is a serious concern, entirely aside from the apparent violations of the logging Rules which resulted from the broadcast of the program.

It was this same concern that caused the Commission to issue the Public Notice, titled "Program-Length Commercials" (FCC 73–215), 39 FCC 2d 1062, 26 RR 2d 1023, sent to all our broadcast licensees on February 22, 1973. In that Public Notice, we stated:

> Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a

[1] These licensees, in addition to yourself, are: Turner Broadcasting of North Carolina, Inc., licensee of station WRET–TV, Channel 36, Charlotte, North Carolina; Midland Television Corporation, licensee of station KMTC–TV, Channel 27, Springfield, Missouri; WXON–TV, Inc., licensee of station WXON–TV, Channel 20, Allen Park, Michigan; and Mid New York Broadcasting Corporation, licensee of station WMTW–TV, Channel 8, Poland Spring, Maine. Additionally, the Commission this day is issuing a letter admonishing Channel Seventeen, Inc., licensee of Station KCBJ–TV, Channel 17, Columbia, Missouri, for apparently violating certain provisions of Section 73.670 of the Commission's Rules and for broadcasting two different chinchilla ranching programs which are program-length commercials. In all, the admonishments and the Notices of Apparent Liability considered in this proceeding involved four different chinchilla ranching programs, to wit: two "National Chinchilla" programs, tagged "NC 7012. Medium: 30:00 TV Program/Revision #9—Final/Approved by NAB 4/17/70," the same program considered in *Weigel* and *Rush*, *supra*, text, and "VTR–NC 6901–TV–30:00," a non-NAB approved script, both sponsored by National Chinchilla, Inc., and furnished through the Jackson Waterbury & Company and Sher & Jones, Inc., advertising agencies; "Royal American Chinchilla," tagged "30 Minute VTR RAC–0972–1," a non-NAB approved script, sponsored by Royal American Chinchilla, Inc., furnished through the Galvin, Farris, Ross, Inc., advertising agency; and "B & B Chinchilla," sponsored by B & B Chinchilla, Inc., a non-NAB approved script, furnished through the F. Thomas & Associates advertising agency, which included a 14-minute program and two 10-second promotional announcements.

program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved. . . .

We stated further:

In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspect of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.

This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

The Commission has found that the questioned program constitutes a program-length commercial since the entire broadcast appears to have been presented to promote the products and services of National Chinchilla, Inc., the program's sponsor, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained therein.

Although the broadcasts of the program-length chinchilla commercials on WMUR–TV ceased before the above Notice was issued, you had been put on notice by many Commission rulings of our policies with respect to this subject.[2] Nevertheless, it appears that by broadcasting the identical half-hour presentation 27 times during the above-referenced period, you exhibited a pattern of subordinating programming in the public interest to programming in the interest of salability, and that by broadcasting at least 29 minutes of commercial advertising in a single hour, you disregarded the representation made in your last renewal application that you would normally present no more than 16 minutes of advertising per hour.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement as to your future policies and procedures regarding the broadcast of program-length commercials. Your response, along with all other information relating to your qualifications to remain a licensee, will be considered in connection with your pending license renewal application.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

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[2] The Commission's rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of Apparent Liability for Forfeiture to
WXON–TV, INC., WALLED LAKE, MICH.

AUGUST 16, 1973.

Certified Mail—Returned Receipt Requested
WXON–TV, INC.
Licensee of Station WXON–TV,
100 Decker Road
Walled Lake, Mich. 48088

GENTLEMEN: This letter constitutes Notice of Apparent Liability for forfeiture, issued pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

From June 15, 1969 until July 10, 1970, WXON–TV broadcast a program entitled "B & B Chinchilla," which was furnished through the F. Thomas & Associates advertising agency and for which the station received $75 per broadcast. This program was presented four times and consumed approximately 14 minutes, in addition to two 10-second promotional advertisements which were also broadcast. Another chinchilla ranching program sponsored by National Chinchilla, Inc., of Shawnee Mission, Kansas, was presented forty-six (46) times during the period from July 26, 1971 through October 7, 1972, or approximately weekly. This program was furnished by the Sher & Jones, Inc. advertising agency, and the station received $150 for each broadcast of this program. The logs submitted pursuant to the Commission's request indicate that the program sponsored by National Chinchilla, Inc. was logged as being approximately 29 minutes in length and was identified as both "E", or "entertainment", and "CM", or "Commercial Matter." In this regard, you explain this apparent contradication as follows:

> In our logging of such programs, we have listed them as 100% commercial content. However, the script and video portions of the programs were not of a hard-sell, strongly commercial style but were primarily background on Chinchilla ranching. Though the program was primarily designed to interest people in investing in Chinchilla Ranching, no direct selling efforts were made during the airing of these programs. It is my opinion, therefore, that the contents of the programs were not 100% commercial, but did have a good amount of educational value as well.

Additionally, each of the two programs broadcast by WXON–TV was logged simply as "Chinchilla Show" with no indication of the sponsoring entity's title. Section 73.670(a)(2)(i) requires that a program log entry be made identifying a program's sponsor each time a program is paid for or sponsored. It appears, therefore, that you violated Section 73.670(a)(2)(i) for failing to enter the sponsor's name

on the program logs each time the chinchilla ranching programs were broadcast.

Although you state that neither program contained a "hard-sell" and that your personal opinion was that neither program was "100% commercial" the entire program was logged as commercial, and a study of the programs' scripts indicates that in fact the programs were program-length commercials, designed and presented to promote the commercial products and services of the programs' sponsors. The programs broadcast, therefore, during the periods referenced above contravened the Commission's policies in the program-length commercial area. In the case of each program, the purportedly commercial and non-commercial segments were so closely interwoven so that each program must be deemed a program-length commercial. Each program emphasizes the commercial value of chinchilla fur as the source of outerwear as well as the profit inuring to those individuals daring enough to risk an investment in the purchase of chinchillas. Additionally, each program dwells at length upon the necessary processes and environmental conditions necessary to breed and raise the animals for sale, the capital necessary to make an initial investment, and the fact that once an investment is made the sponsoring firms' consultative services for establishing the proper systems are available to the novice chinchilla rancher. In both programs, the discussion of chinchillas and chinchilla ranching leads into commercial promotions of the sponsors' products and services, and it becomes increasingly clear that each program, as contrasted with segments of the program, has been presented as a single commercial advertisement and designed simply to promote the sponsors' commercial offerings. In this regard, it is abundantly clear that any entertainment or informational content the programs may contain are wholly incidental to the commercial promotions each program contains. Moreover, the fact that the same program was presented forty-six (46) times in a 15-month period in one case, and four times in a month in another, indicates that the program was presented as a commercial inducement to viewers to make investments in chinchilla ranching.[1]

The Commission has considered the circumstances of this case and has determined that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability for forfeiture in the amount of three thousand dollars ($3,000) for willfully or repeatedly failing to observe Section 73.670 (a)(2)(i) of the Commission's Rules on those dates during August, September and October, 1972, when the "Chinchilla Show" was broadcast. This proceeding is confined to those violations which occurred

[1] The Commission rulings in the program-length commercial area include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972) and *WFIL, Inc.*, 38 FCC 2d 411 (1972); Public Notice, "Program-Length Commercials," (FCC 73–215), 39 FCC 2d 1062, 26 RR 2d 1023 (1973); *Taft Broadcasting Co.*, 39 FCC 2d 1070, 26 RR 2d 1025 (1973); *Weigel Broadcasting Co.*, 73–565 (May 23, 1973); *Rush Broadcasting Corp.*, 73–844 (August 2, 1973). Both *Weigel* and *Rush* concerned those licensees' broadcasts of chinchilla ranching programs which were sponsored by National Chinchilla, Inc. The program in those cases were approved by the National Association of Broadcasters Television Code Authority. The programs broadcast by WXON–TV, however, found no such Code Authority approval.

within one year of the date of the issuance of this Notice of Apparent Liability.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $3,000, made payable to the Treasurer of the United States.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioners Johnson, Wiley and Hooks absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73–871

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request to
WXON–TV, INC., WALLED LAKE, MICH.
For Statement Concerning Future Policies as to Program-Length Commercials

AUGUST 16, 1973.

WXON–TV, INC.,
Licensee of Station WXON–TV,
100 Decker Road,
Walled Lake, Mich. 48088

GENTLEMEN: The Commission has on this date issued to you a Notice of Apparent Liability for forfeiture for violation of the Commission's logging Rules, specifically Section 73.670(a) (2) (i), in connection with the broadcast of two chinchilla ranching programs, one sponsored by National Chinchilla, Inc., the other sponsored by B & B Chinchilla. As noted in the Notice, the same B & B Chinchilla program was presented once a week during a one-month period in 1969, while the same National Chinchilla, Inc. program was presented forty-six (46) times during a continuous 15-month period in 1971–1972. The Notice of Apparent Liability was confined to those apparent violations of Section 73.670(a) (2) (i) of the Commission's Rules which had occurred within a year of the Notice's issuance, although it is apparent from a review of the programs' logs that Section 73.670 (a) (2) (i) of the Rules was violated each time the programs were broadcast.

Programs concerning chinchilla ranching, most notably programs the Commission has determined are primarily designed to commercially promote those firms engaged in marketing chinchilla and chinchilla breeding systems, recently have come to the Commission's attention with increased frequency. On May 23, 1973, the Commission admonished Weigel Broadcasting Company for its broadcast of the "Chinchilla Ranching" program. *Weigel Broadcasting Co.*, FCC 73–565. On August 2, 1973, the Commission admonished Rush Broadcasting Corporation, licensee of WRBT–TV, for its broadcast of the identical program on seven occasions. *Rush Broadcasting Corp.*, FCC 73–844. Today, we have issued Notices of Apparent Liability for forfeiture to five licensees for apparent violations of Section 73.670 of the Commission's Rules incurred in connection with the broadcast of different programs concerning chinchilla ranching as well as issuing admonishments to six licensees, including yourself, for broadcasting

what the Commission deems to be program-length commercials.[1] The common thread running throughout each of the chinchilla ranching programs the Commission has thus far considered, although some of these programs are different, is the conclusive showing that each of these programs represents nothing more than a single continuous commercial promotion for the programs' sponsors and are therefore violative of our policies in the program-length commercial area.

The licensee's broadcast of these particular chinchilla ranching programs were not approved by the National Association of Broadcasters Television Code, Authority, unlike the Chinchilla ranching program considered in *Weigel* and *Rush*, *supra*. The programs here nevertheless contained elements that cause the same conclusion as reached in those cases; namely, that each program was designed, produced and presented to promote the products and services of the programs' sponsors since the programs so closely wove the purportedly non-commercial and commercial segments that the entire duration of each program broadcast must be considered a program-length commercial.

As mentioned above, the Notice of Apparent Liability issued to you this day is concerned with the apparent violations of the Commission's logging Rules, and although they attended the broadcasts of the programs questioned herein, the apparent violations asserted in the Notice were not premised upon the broadcast of the programs per se. The Commission believes, however, that the broadcast of any program-length commercial, i.e., any program that either weaves the non-commercial and commercial segments so closely, or any program that is entirely commercial because it is designed to promote a sponsor's products or services without regard to the public's interest in programming broadcast by Commission licensees, is a serious concern, entirely aside from the apparent violations of the logging Rules which result from the broadcast of such programs.

It was this same concern that caused the Commission to issue the Public Notice, titled "Program-Length Commercials" (FCC 73–215), 39 FCC 2d 1062, 26 RR 2d 1023, sent to all our broadcast licensees on February 22, 1973. In that Public Notice, we stated:

[1] These licensees, in addition to yourself, are: United Television Co. of New Hampshire, licensee of station WMUR–TV, Channel 9, Manchester, New Hampshire; Turner Broadcasting of North Carolina, Inc., licensee of Station WRET–TV, Channel 36, Charlotte, North Carolina; Midland Television Corporation, licensee of Station KMTC–TV, Channel 27, Springfield, Missouri; and Mid New York Broadcasting Corporation, licensee of station WMTW–TV, Channel 8, Poland Spring, Maine. Additionally, the Commission this day is issuing a letter admonishing Channel Seventeen, Inc., licensee of station KCBJ–TV, Channel 17, Columbia, Missouri, for apparently violating certain provisions of Section 73.670 of the Commission's Rules and for broadcasting two different chinchilla ranching programs which are program-length commercials. In all, the admonishments and the Notices of Apparent Liability considered in this proceeding involved four different chinchilla ranching programs, to wit: two "National Chinchilla" programs, tagged "NC 7012, Medium: 30:00 TV Program/Revision #9—Final/Approved by NAB 4/17/70," the same program considered in *Weigel* and *Rush, supra*, text, and "VTR–NC 6901–TV–30:00," a non-NAB approved script, both sponsored by National Chinchilla, Inc. and furnished through the Jackson Waterbury & Company and Sher & Jones, Inc. advertising agencies: "Royal American Chinchilla," tagged "30 Minute VTR RAC–0972–1," a non-NAB approved script, sponsored by Royal American Chinchilla, Inc., furnished through the Galvin, Farris, Ross, Inc. advertising agency: and "B & B Chinchilla," sponsored by B & B Chinchilla, Inc., a non-NAB approved script, furnished through the F. Thomas & Associates advertising agency, which included a 14-minute program and two 10-second promotional announcements.

> Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved . . .

We stated further:

> In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspect of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.
>
> This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

The Commission has found that the questioned program constitutes a program-length commercial since the entire broadcast appears to have been presented to promote the products and services of National Chinchilla, Inc., the program's sponsor, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained therein.

Although the broadcasts of the program-length chinchilla commercials on WXON–TV ceased before the above Notice was issued, you had been put on notice by many Commission rulings of our policies with respect to this subject.[2] Nevertheless, it appears that by broadcasting these half-hour presentations 50 times during the above-referenced period, you exhibited a pattern of subordinating programming in the public interest to programming in the interest of salability, and that by broadcasting at least 29 minutes of commercial advertising in a single hour, you disregarded the representation made in your last renewal application that you would normally present no more than 16 minutes of advertising per hour.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement as to your future policies and procedures regarding the broadcast of program-length commercials. Your response, along with all other information relating to your qualifications to remain a licensee, will be considered in connection with your next renewal application.

Commissioners Johnson, Wiley and Hooks absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

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[2] Commission rulings include the following: ***Columbus Broadcasting Company, Inc.***, 25 FCC 2d 56 (1970); ***Multimedia, Inc.***, 25 FCC 2d 59 (1970); ***KOOP–TV, Inc.***, 24 FCC 2d 149 (1970); ***Dena Pictures, Inc.***, 31 FCC 2d 206 (1971); and ***National Broadcasting Company***, 29 FCC 2d 67 (1971); ***WUAB, Inc.***, 37 FCC 2d 748 (1972); and ***WFIL, Inc.***, 38 FCC 2d 411 (1972).